

COMPILATION OF SHELLFISH LAWS AND REGULATIONS



MAINE DEPARTMENT OF
MARINE RESOURCES

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PUBLIC LAWS
OF THE STATE OF MAINE RELATING
TO MARINE RESOURCES

This handbook only contains information relating to shellfish and shellfish harvesting activities. The word “shellfish”, as defined in statute, includes the following species: clams, quahogs, oysters and mussels; and includes shellstock and shucked shellfish. We have made an effort to provide full and complete information on all laws pertaining to all types of shellfish, for the convenience of all concerned. The reader should be advised that the contents are subject to change between publications. The reader will notice that certain numbers have been omitted from various sections. This has been done to eliminate the sections that do not pertain to shellfish, thus giving the reader a more concise reference material.

Further information may be obtained by writing to the Department of Marine Resources, 21 State House Station, Augusta, ME 04333, or by contacting one of our Marine Patrol Officers (see pages 194-195 for a listing).

Compiled by Michelle Mason Webber

REQUIRED LICENSES ISSUED BY MARINE RESOURCES FEES.....	19
CHAPTER 601-GENERAL PROVISIONS	19
§6001. DEFINITIONS.....	19
<i>Aquaculture</i>	19
<i>Bulk pile</i>	19
<i>Buy</i>	19
<i>Coastal waters</i>	19
<i>Commissioner</i>	19
<i>Common carrier</i>	20
<i>Conservation</i>	20
<i>Crew member</i>	20
<i>Dealer</i>	20
<i>Department</i>	20
<i>Engage</i>	20
<i>Equipment</i>	20
<i>Establishment</i>	20
<i>Fish, the noun</i>	20
<i>Fish, the verb</i>	20
<i>Hermetically sealed</i>	20
<i>Intertidal zone</i>	20
<i>License</i>	20
<i>Mahogany quahog</i>	20
<i>Marine mollusk</i>	20
<i>Marine organism</i>	20
<i>Marine resources</i>	20
<i>Marine resources' laws</i>	21
<i>Marine species</i>	21
<i>Permit</i>	21
<i>Person</i>	21
<i>Personal use</i>	21
<i>Possession</i>	21
<i>Process, the verb</i>	21
<i>Quahog</i>	21
<i>Retail</i>	21
<i>Sell</i>	21
<i>Serve</i>	21
<i>Shellfish</i>	21
<i>Shellstock</i>	21
<i>Ship, the verb</i>	21
<i>Shucked shellfish</i>	21
<i>Sunrise</i>	21
<i>Sunset</i>	21
<i>Suspension</i>	21
<i>Take, the verb</i>	21
<i>Transfer</i>	22
<i>Transport, the verb</i>	22
<i>Vehicle</i>	22
<i>Wholesale</i>	22
§6005. LABELING SHELLFISH	22

CHAPTER 603-DEPARTMENT ADMINISTRATION.....	22
§6025. MARINE PATROL OFFICERS	22
<i>Appointment.....</i>	<i>22</i>
<i>Fees and other offices.....</i>	<i>22</i>
<i>Powers and duties.....</i>	<i>22</i>
<i>Search powers.....</i>	<i>22</i>
<i>Sheriff and police powers as marine patrol officers.....</i>	<i>22</i>
§6038. SHELLFISH ADVISORY COUNCIL.....	23
<i>Appointment; composition.....</i>	<i>23</i>
<i>Purpose.....</i>	<i>23</i>
<i>Term.....</i>	<i>23</i>
<i>Officers.....</i>	<i>23</i>
<i>Meeting.....</i>	<i>24</i>
<i>Compensation.....</i>	<i>24</i>
CHAPTER 605-GENERAL DEPARTMENT ACTIVITIES	24
SUBCHAPTER 2 – LEASES AND SPECIAL LICENSES.....	24
§6071. IMPORTING OF CERTAIN MARINE ORGANISMS	24
<i>Live importing for introduction into coastal waters.....</i>	<i>24</i>
<i>Permits and regulations on importing for introduction.....</i>	<i>24</i>
<i>Restricting importation of organism.....</i>	<i>24</i>
<i>Organism and products embargoed and condemned.....</i>	<i>24</i>
<i>Salmon imports prohibited.....</i>	<i>25</i>
§6072. RESEARCH AND AQUACULTURE LEASES.....	25
<i>Authority.....</i>	<i>25</i>
<i>Lease requirement; finfish and suspension culture</i>	<i>25</i>
<i>Limitations of lease.....</i>	<i>25</i>
<i>Municipal approval.....</i>	<i>26</i>
<i>Applications.....</i>	<i>26</i>
<i>Application information.....</i>	<i>26</i>
<i>Application review.....</i>	<i>26</i>
<i>Department site review.....</i>	<i>27</i>
<i>Hearing procedure.....</i>	<i>27</i>
<i>Decision.....</i>	<i>27</i>
<i>Conditions.....</i>	<i>28</i>
<i>Preference.....</i>	<i>28</i>
<i>Rents</i>	<i>28</i>
<i>Notification of granted leases</i>	<i>28</i>
<i>Monitoring and revocation of leases.....</i>	<i>29</i>
<i>Renewal.....</i>	<i>29</i>
<i>Transferability.....</i>	<i>29</i>
<i>Regulations.....</i>	<i>30</i>
<i>Lease acreage increase; following.....</i>	<i>30</i>
<i>Conflicts</i>	<i>31</i>
<i>Rules.....</i>	<i>31</i>
<i>Restitution.....</i>	<i>31</i>
§6072-A. LIMITED-PURPOSE LEASE FOR COMMERCIAL OR SCIENTIFIC RESEARCH	31
<i>Authority.....</i>	<i>31</i>
<i>Suspended culture.....</i>	<i>31</i>
<i>Limit on duration.....</i>	<i>31</i>

<i>Size limitation</i>	31
<i>Notice of application</i>	31
<i>Public hearing</i>	31
<i>Notice of public hearing</i>	31
<i>Rules; general and lease application</i>	32
<i>Application information</i>	32
<i>Assessment of proposed activities</i>	32
<i>Municipal approval</i>	32
<i>Preference</i>	32
<i>Decision</i>	32
<i>Fee</i>	33
<i>Conditions</i>	33
<i>Statement of rights conveyed</i>	33
<i>Notification of granted leases</i>	33
<i>Scientific lease renewal</i>	33
<i>Commercial lease not renewable</i>	33
<i>Extension of commercial lease</i>	33
<i>Monitoring and revocation of leases</i>	34
<i>Restitution</i>	34
§6072-B. EMERGENCY AQUACULTURE LEASE FOR SHELLFISH	34
<i>Authority</i>	34
<i>Limitation</i>	34
<i>Permission of intertidal land owners</i>	34
<i>No fee</i>	34
<i>Suspended culture</i>	35
<i>Limit on duration</i>	35
<i>Extension of emergency aquaculture lease</i>	35
<i>Public notice</i>	35
<i>Actions required of lease holder</i>	35
<i>Conditions</i>	35
<i>Rules</i>	35
§6072-C. LIMITED-PURPOSE AQUACULTURE LICENSE	35
<i>License required</i>	35
<i>Licensed activities; criteria</i>	35
<i>Eligibility</i>	36
<i>License limitations</i>	36
<i>Application</i>	36
<i>Fee</i>	37
<i>Prohibition; molesting gear</i>	37
<i>Rules</i>	37
<i>Violation; restitution</i>	37
§6073. EXCLUSIVITY; PROHIBITION OR INTERFERENCE	37
<i>Exclusivity</i>	37
<i>Prohibition on interference</i>	37
<i>Cultchless American oysters; possession</i>	37
<i>Penalty</i>	37
§6073-A. SEASON AND MINIMUM SIZE EXEMPTION; AQUACULTURE	37
§6073-B. HARVESTER LICENSE EXEMPTION; AQUACULTURE	38
§6073-C. HARVESTER LICENSE EXEMPTION; SCALLOP AQUACULTURE	38
§6074. SPECIAL LICENSE	38
<i>Exception</i>	38

<i>Application</i>	38
<i>Filing fee</i>	38
<i>Limitation</i>	38
<i>Fees</i>	38
<i>Renewal</i>	39
<i>Transportation permit</i>	39
<i>Council approval not required</i>	39
<i>Penalty</i>	39
§6076. MARINE SHELLFISH TOXINS MONITORING PROGRAM	39
<i>Purpose</i>	39
<i>Responsibilities</i>	39
SUBCHAPTER 3 - INSPECTION AND QUALITY CONTROL	40
§6101. VOLUNTARY FISH PRODUCTS INSPECTION PROGRAM	40
<i>Purpose</i>	40
<i>Program</i>	40
<i>Regulations</i>	40
<i>Sardines</i>	40
<i>Labeling</i>	40
<i>Misleading labeling prohibited</i>	40
<i>Preventing misleading labeling</i>	40
<i>Procedure</i>	40
§6102. MANDATORY QUALITY CONTROL PROGRAM	40
§6103. IMPLEMENTATION OF FISHERY PRODUCT OR SHELLFISH INSPECTION PROGRAMS	41
CHAPTER 607-REGULATIONS	41
SUBCHAPTER 1- REGULATION POWERS	41
§6171 CONSERVATION AND PROPAGATION OF MARINE ORGANISMS	41
<i>Commissioner's powers</i>	41
<i>Limitations</i>	41
<i>Management plans</i>	41
<i>Emergency regulations</i>	41
<i>Procedure</i>	41
<i>Rules to limit taking of marine organisms</i>	41
§6171-A. PROTECTION OF PUBLIC HEALTH AND SAFETY AND PREVENTION OF GEAR CONFLICTS	42
<i>Commissioner's powers</i>	42
<i>Limitations</i>	42
<i>Considerations</i>	42
<i>Emergency rules</i>	42
<i>Procedure</i>	42
§6172. CONTAMINATED OR POLLUTED FLATS	42
<i>Commissioner's powers</i>	42
<i>Federal waters</i>	43
<i>Private property; right of entry</i>	43
<i>Effective immediately upon signature</i>	43
<i>Notification</i>	43
<i>Enforcement</i>	43
SUBCHAPTER 2 – REGULATION PROCEDURE	44
§6191. RULEMAKING	44

Procedures	44
Other requirements	44
§6192. EMERGENCY RULEMAKING	44
Procedures	44
Advisory council	44
Effective period	44
Effective date	44
Repeal	45
CHAPTER 609-ENFORCEMENT	45
§6207. SEIZURE AND DISPOSITION OF EQUIPMENT AND ORGANISMS	45
<i>May be seized without warrant; marine patrol officer's duty to libel; contents of libel</i>	45
<i>Items which need not be libeled</i>	45
<i>Order of notice; contents</i>	45
<i>Sale or other disposition prior to hearing</i>	45
<i>Items or proceeds forfeited if no court appearance; proceeds disposed of in same manner as fines</i>	46
<i>Duty of claimant to file written claim on or before hearing day; contents</i>	46
<i>Claimant admitted as party; hearing</i>	46
<i>Court order if claimant found entitled to any item claimed</i>	46
<i>Forfeiture; executions for cost; appeal; recognizance</i>	46
<i>Disposition of forfeited items</i>	47
<i>Report to commissioner</i>	47
CHAPTER 615-GENERAL LICENSE PROVISIONS	47
§6301. GENERAL PROVISIONS	47
<i>Resident license</i>	47
<i>Expiration</i>	47
<i>Nontransferable</i>	48
<i>Supplemental license</i>	48
<i>Information</i>	48
§6302. GENERAL EXCEPTIONS	48
<i>Personal use</i>	48
<i>Common carrier</i>	48
<i>Hermetically sealed containers</i>	49
<i>Retail sale of certain seafood products</i>	49
§6302-A. TAKING OF MARINE ORGANISMS BY PASSAMAQUODDY TRIBAL MEMBERS	49
<i>Tribal exemption; commercial harvesting licenses</i>	49
<i>Tribal exemption; sustenance or ceremonial tribal use</i>	49
<i>Lobster, sea urchin, scallop and elver licenses; limitations</i>	50
<i>Sea urchin and scallop handfishing and tender licenses; limitations</i>	51
<i>Notification</i>	51
<i>License suspension</i>	51
<i>Enforcement</i>	52
<i>Resident of the State defined</i>	52
<i>Political subdivision</i>	52
<i>Agent</i>	52
§6303. APPLICATION	52
<i>Forms</i>	52
<i>Misrepresentation or error</i>	52
<i>Satisfactory answers</i>	52

§6304. FEES.....	52
<i>Duplication</i>	52
§6305. POSSESSION OF LICENSE	52
<i>Exhibit on demand</i>	52
<i>Prima facie evidence</i>	52
<i>Crew members</i>	52
§6306. CONSENT TO INSPECTION; VIOLATION	53
<i>Consent to inspection</i>	53
<i>Seizure of evidence</i>	53
<i>Refusal</i>	53
§6307. MISSTATEMENT OR MISREPRESENTATION	53
§6308. COMPLIANCE WITH SUPPORT ORDERS; LICENSE QUALIFICATIONS AND CONDITIONS	53
§6309. LICENSEES NOT IN COMPLIANCE WITH A COURT ORDER OF SUPPORT; ENFORCEMENT OF PARENTAL SUPPORT OBLIGATIONS	53
<i>Definitions</i>	53
<i>Noncompliance with a support order</i>	54
CHAPTER 617 - LICENSE SUSPENSION	54
SUBCHAPTER 1 - SUSPENSION PROCEEDINGS.....	54
ARTICLE 1 -- SUSPENSION ON CONVICTION	54
§6351. SUSPENSION BASED ON CRIMINAL CONVICTION OR CIVIL ADJUDICATION	54
<i>Grounds for suspension</i>	54
<i>Suspension procedure</i>	54
§6352. NOTICE	54
<i>Time of notice</i>	54
<i>Nature of notice</i>	54
<i>Hearing</i>	55
§6353. HEARING	55
<i>Place of hearing</i>	55
<i>Evidence</i>	55
<i>Decisions</i>	55
ARTICLE 2 -- SUSPENSION WITHOUT CONVICTION.....	55
§6371. SUSPENSION WITHOUT CRIMINAL CONVICTION OR CIVIL ADJUDICATION	55
<i>Suspension for refusal to allow inspection</i>	55
<i>Suspension for refusal to allow a shellfish inspection by a department shellfish inspector</i>	55
<i>Suspension for violations</i>	55
§6372. PROCEDURE FOR SUSPENDING ON REFUSAL TO ALLOW INSPECTION	55
<i>Initiation and suspension</i>	55
<i>Notice</i>	55
<i>Hearing</i>	55
<i>Stay</i>	56
<i>Appeal</i>	56
§6374. PROCEDURE FOR SUSPENDING WITHOUT CRIMINAL CONVICTION OR CIVIL ADJUDICATION	56
<i>Initiation and notice</i>	56
<i>Hearing</i>	56
<i>Finding of marine resources violation and suspension</i>	56
<i>Prohibition against multiple suspensions</i>	57

<i>Appeal</i>	57
<i>Request for hearing on suspension length, place of hearing</i>	57
SUBCHAPTER 2 - SUSPENSION PENALTIES	57
§6401. SUSPENSION BASED ON CRIMINAL CONVICTION	57
<i>Violation of marine resources' laws</i>	57
<i>Length of suspension</i>	57
<i>Applicable standards</i>	57
§6403. SUSPENSION BASED ON REFUSING INSPECTION OR SEIZURE	57
§6406. ENGAGING IN ACTIVITIES WHILE UNDER SUSPENSION	57
<i>Prohibited acts</i>	57
<i>Penalty</i>	58
§6407. CONVICTION; JUVENILE OFFENSE; FAILURE TO APPEAR	58
<i>Conviction</i>	58
<i>Juvenile offense</i>	58
<i>Failure to appear</i>	58
CHAPTER 623 – SHELLFISH, SCALLOPS, WORMS AND MISCELLANEOUS LICENSES	58
SUBCHAPTER 1 - SHELLFISH	58
ARTICLE 1 -- LICENSES	58
§6601. SHELLFISH LICENSE	58
<i>License required</i>	58
<i>Licensed activities</i>	58
<i>Licensed activities;aquaculture</i>	58
<i>Eligibility</i>	58
<i>Personal use exception</i>	58
<i>Fee</i>	58
<i>Exception</i>	59
<i>Definition</i>	59
<i>Violation</i>	59
§6602. SURF CLAM BOAT LICENSE	59
<i>License required</i>	59
<i>Licensed activity</i>	59
<i>Eligibility</i>	59
<i>Exception</i>	59
<i>Fee</i>	59
<i>Violation</i>	59
ARTICLE 2 -- LIMITS ON FISHING	59
§6621. CLOSED AREAS	59
<i>Taking from closed areas</i>	59
<i>Washing or holding in closed areas</i>	59
<i>Exception</i>	60
<i>Penalty</i>	60
§6623. METHOD OF TAKING SOFT SHELL CLAMS	60
<i>Hand implement only</i>	60
<i>Artificial breathing device prohibited</i>	60
<i>Special license for dredging</i>	60
<i>Department excepted</i>	61

§6625. IDENTIFICATION AND TAGGING OF SHELLFISH	61
<i>Tagging required</i>	61
<i>Rules</i>	61
ARTICLE 3 -- SHELLFISH FUND.....	61
§6651. SHELLFISH FUND	61
<i>Fees to be paid into fund</i>	61
<i>Uses of fund</i>	61
<i>Nonlapsing fund</i>	61
ARTICLE 4 -- MUNICIPAL CONSERVATION PROGRAMS	62
§6671. MUNICIPAL SHELLFISH CONSERVATION PROGRAMS	62
<i>Municipal funds</i>	62
<i>Municipal fines</i>	62
<i>Municipal program and ordinance</i>	62
<i>Shellfish conservation ordinance</i>	62
<i>Shellfish conservation licensing</i>	62
<i>Adoption requirements</i>	63
<i>State parks</i>	64
<i>Management program approval</i>	64
<i>Period of ordinance</i>	64
<i>Municipality defined</i>	64
<i>Joint programs; reciprocal privileges</i>	64
<i>Local enforcement</i>	64
<i>Criminal Penalty</i>	65
<i>Civil Penalty</i>	65
<i>Certificate as evidence</i>	65
<i>Intertidal mussel harvesting</i>	66
§6673. MUNICIPAL SHELLFISH AQUACULTURE PERMIT	66
<i>Application</i>	66
<i>Decision</i>	66
<i>Municipal shellfish aquaculture permit</i>	67
<i>Renewals</i>	67
§6674. INTERFERENCE WITH MUNICIPAL SHELLFISH AQUACULTURE PERMIT.	67
§6675. SHELLFISH RESEEDING PROGRAM	68
§6676. SUMMARY OF MUNICIPAL ORDINANCES.....	68
ARTICLE 5 -- SOFT-SHELL CLAM MANAGEMENT	68
§6681. SOFT-SHELL CLAM MANAGEMENT	68
<i>Purpose</i>	68
<i>Definition</i>	68
<i>Minimum size</i>	68
<i>Tolerance</i>	68
<i>Enforcement</i>	68
<i>Penalty</i>	69
<i>Sunset</i>	69
ARTICLE 6 – WATER QUALITY	69
§6691. WATER QUALITY SAMPLERS	69
SUBCHAPTER 2-A--QUAHOGS	69

ARTICLE 1 -- LICENSES	69
§6731. MAHOGANY QUAHOGS.....	69
<i>License required.....</i>	<i>69</i>
<i>Licensed activities.....</i>	<i>69</i>
<i>Personal use exception.....</i>	<i>69</i>
<i>Fee.....</i>	<i>69</i>
<i>Conditions.....</i>	<i>70</i>
<i>Violation.....</i>	<i>70</i>
§6731-A. MAHOGANY QUAHOG MONITORING PROGRAM	70
<i>Harvesting areas.....</i>	<i>70</i>
<i>Industry groups.....</i>	<i>70</i>
<i>Sampling.....</i>	<i>70</i>
<i>Rules.....</i>	<i>70</i>
<i>Mahogany Quahog Monitoring Fund.....</i>	<i>70</i>
<i>Stock assessment and report.....</i>	<i>70</i>
§6732. OTHER QUAHOGS.....	70
<i>License required.....</i>	<i>70</i>
<i>Licensed activities.....</i>	<i>70</i>
<i>Violation.....</i>	<i>71</i>
ARTICLE 2 -- LIMITS ON FISHING	71
§6743. CLOSED AREAS.....	71
<i>Mahogany quahogs from closed areas.....</i>	<i>71</i>
<i>Washing or holding in closed areas.....</i>	<i>71</i>
<i>Exception.....</i>	<i>71</i>
SUBCHAPTER 2-B - MUSSELS	71
§6745. HAND-RAKING MUSSEL LICENSE	71
<i>License required.....</i>	<i>71</i>
<i>Licensed activity.....</i>	<i>71</i>
<i>Licensed activities; aquaculture.....</i>	<i>71</i>
<i>Eligibility.....</i>	<i>71</i>
<i>Exception.....</i>	<i>71</i>
<i>Fee.....</i>	<i>71</i>
<i>Violation.....</i>	<i>72</i>
§6746. MUSSEL BOAT LICENSE	72
<i>License required.....</i>	<i>72</i>
<i>Licensed activity.....</i>	<i>72</i>
<i>Licensed activities; aquaculture.....</i>	<i>72</i>
<i>Eligibility.....</i>	<i>72</i>
<i>Exception.....</i>	<i>72</i>
<i>Fee.....</i>	<i>72</i>
<i>Violation.....</i>	<i>72</i>
§6746-A. NIGHT PROHIBITION	72
§6747. CLOSED AREAS.....	72
<i>Taking from closed areas.....</i>	<i>72</i>
<i>Washing or holding in closed areas.....</i>	<i>72</i>
<i>Exception.....</i>	<i>73</i>
CHAPTER 625 – WHOLESALE AND RETAIL LICENSES.....	73

§6851. WHOLESALE SEAFOOD LICENSE; WHOLESALE SEAFOOD LICENSE W/LOBSTER PERMIT; WHOLESALE SEAFOOD LICENSE W/URCHIN PERMIT, WHOLESALE SEAFOOD LICENSE W/SHRIMP PERMIT.....	73
<i>License required</i>	73
<i>License activities</i>	73
<i>Exceptions</i>	73
<i>License limited</i>	73
<i>Supplemental license</i>	73
<i>Fees</i>	73
<i>Violation</i>	74
§6851-A. LIMITED WHOLESALE SHELLFISH HARVESTER’S LICENSE.....	74
<i>License required</i>	74
<i>License activity</i>	74
<i>License limited</i>	74
<i>Fee</i>	74
§6852. RETAIL SEAFOOD LICENSE	74
<i>License required</i>	74
<i>License activity</i>	74
<i>Enhanced retail certificate authorized</i>	74
<i>License limited</i>	75
<i>Certificate limited</i>	75
<i>Fee</i>	75
<i>Violation</i>	75
<i>Rules</i>	75
§6852-B. RETAIL SALE OF CERTAIN SEAFOOD PRODUCTS.....	75
<i>Lobster parts or meat</i>	75
§6855. SHELLFISH TRANSPORTATION LICENSE	75
<i>License required</i>	75
<i>License activity</i>	76
<i>License limitations</i>	76
<i>Supplemental license</i>	76
<i>Information required</i>	76
<i>Fees</i>	76
<i>Violation</i>	76
§6856. SHELLFISH SANITATION AND DEPURATION CERTIFICATE	76
<i>Shellfish sanitation certificate</i>	76
<i>Express authorizations</i>	76
<i>Depuration certificate</i>	76
<i>Soft-shelled clam depuration harvesting in municipalities with municipal shellfish conservation programs</i>	77
<i>Rules</i>	77
<i>Right of entry</i>	78
<i>Products embargoed and condemned</i>	78
§6863. CULTCHLESS AMERICAN OYSTER GROWERS LICENSE	78
<i>Definitions</i>	78
<i>License</i>	78
<i>Fee</i>	78
<i>Penalty</i>	78
CHAPTER 627 – GENERAL PROHIBITIONS	78
§6953. STOPPING FOR INSPECTION; PENALTY	78
<i>Stopping</i>	78

<i>Remaining stopped</i>	78
<i>Standing by</i>	78
<i>Throwing or dumping items</i>	79
§6954. DRAGGING IN CABLE AREA.....	79
<i>Violation</i>	79
<i>Penalty</i>	79
§6954-A. DRAGGING AND SCALLOPING PROHIBITED IN THE FRENCHBORO AREA.....	79
<i>Violation</i>	79
<i>Scalloping permitted by rule</i>	79
<i>Penalty</i>	79
§6954-C. DRAG LIMITS NORTH OF INTERNATIONAL BRIDGE, LUBEC.....	79
<i>Gear requirements</i>	79
<i>Violation</i>	80
§6956. DIVER’S DOWN FLAG REQUIRED	80
§6957. FISHING NEAR FLOATING EQUIPMENT.....	80
<i>Prohibition</i>	80
<i>Markings</i>	80
<i>Penalty</i>	80
CHAPTER 629 – GREAT SALT BAY MARINE SHELLFISH PRESERVE.....	80
§6961. GREAT SALT BAY MARINE SHELLFISH PRESERVE	80
<i>Designation; prohibition</i>	80
<i>Great Salt Bay defined</i>	80
<i>Research activities</i>	80
<i>Taking of finfish</i>	81
SHELLFISH REGULATIONS	81
CHAPTER 2: AQUACULTURE LEASE REGULATIONS	81
SUMMARY AND DISCLAIMER.....	81
CHAPTER 4: CERTIFICATION, RECERTIFICATION, REVOCATION OF CERTIFICATION FOR MUNICIPAL SHELLFISH CONSERVATION WARDEN.....	81
4.10 CERTIFICATION.....	81
4.20 MINIMUM QUALIFICATIONS.....	82
4.30 RECERTIFICATION	82
4.40 REVOCATION, SUSPENSION OR REFUSAL TO RENEW CERTIFICATION.....	83
4.50 PERFORMANCE STANDARDS	83
CHAPTER 5: CONFIDENTIALITY OF FISHERY STATISTICS.....	84
5.01 DEFINITIONS.....	84
5.10 COLLECTION AND MAINTENANCE OF STATISTICS	84
5.20 ACCESS TO STATISTICS	85
5.30 RELEASE OF STATISTICS	85
5.35 PROHIBITIONS	85
5.40 IDENTIFICATION AND TAGGING OF SHELLFISH.....	86
CHAPTER 7: REQUIREMENTS FOR MUNICIPALITIES HAVING SHELLFISH CONSERVATION PROGRAMS 86	
7.10 DEFINITION	86
7.20 MANAGEMENT PLAN	86
7.30 MANAGEMENT RESPONSIBILITIES.....	87

7.40	LICENSING OF SHELLFISH HARVESTERS	87
7.50	MUNICIPAL CONSERVATION CLOSURES	87
7.60	RESCISSION OF APPROVAL	87
7.70	INTERTIDAL MUSSEL HARVESTING BY DRAG OR DREDGE	88
CHAPTER 8: LANDINGS PROGRAM		88
8.01	DEFINITIONS	88
8.02	COMPLIANCE	89
8.05	PRIMARY BUYERS PERMIT	89
8.10	PRIMARY BUYER PERMIT REPORTING	89
8.20	HARVESTER REPORTING: SHELLFISH BAIT PERMIT	90
CHAPTER 9: HARVESTER: SHELLSTOCK HARVESTING, HANDLING AND SANITATION		90
9.01	COMPLIANCE	90
9.02	SHELLSTOCK WASHING	91
9.03	PROTECTION FROM CONTAMINATION	92
9.04	SHELLFISH HARVESTER VESSELS	92
9.05	VEHICLES USED TO TRANSPORT SHELLSTOCK	93
9.06	SHELLSTOCK TAGGING AND LABELING	94
9.07	SHELLFISH AQUACULTURE	95
9.08	SHELLSTOCK TIME TO TEMPERATURE CONTROLS	98
9.09	NON-COMPLIANCE	98
9.06(G)	EXAMPLE HARVESTER TAGS	99
CHAPTER 10: CLAMS AND QUAHOGS		99
10.01	TAKING OF QUAHOGS IN MAQUOIT BAY	99
10.02	TAKING OF QUAHOGS IN MIDDLE BAY	100
10.03	METHOD OF TAKING SURF, HEN CLAMS OR QUAHOGS	100
10.04	QUAHOG SIZE RESTRICTIONS	100
10.05	TAKING OF QUAHOGS IN THE SUB-TIDAL WATERS OF NEW MEADOWS LAKE, BRUNSWICK AND WEST BATH	100
CHAPTER 12: MUSSELS		101
12.01	NIGHTTIME HARVESTING PROHIBITION	101
12.02	DRAG SIZE LIMIT	101
12.03	SEED MUSSEL	101
12.04	MUSSELS COUNT AND TOLERANCE	102
12.05	USE OF SEED MUSSELS	102
12.06	SEED MUSSEL CONSERVATION AREAS	102
CHAPTER 14: OYSTERS		103
14.01	DEFINITIONS	103
14.10	EUROPEAN OYSTER HARVESTING RESTRICTIONS	103
14.40	CRITERIA FOR ISSUING A CULTCHLESS AMERICAN OYSTER LICENSE	104
CHAPTER 15: GENERAL SHELLFISH SANITATION REQUIREMENTS		104
15.01	COMPLIANCE	104
15.02	DEFINITIONS	104
15.03	REGULATED ACTIVITY	113
15.04	ORIGIN OF SHELLFISH	114
15.05	CERTIFICATION REQUIREMENTS	114
15.06	INITIAL CERTIFICATION CRITERIA	115

15.07	RENEWAL OF CERTIFICATION	116
15.08	DENIAL OF CERTIFICATION	116
15.09	INSPECTIONS	116
15.10	PERFORMANCE BASED INSPECTION PROGRAM (PIP)	117
15.11	PERFORMANCE BOND	117
15.12	ALTERATIONS AND RENOVATIONS	117
15.13	SURRENDER OF CERTIFICATE AND REACTIVATION OF CERTIFICATE	118
15.14	SUSPENSION, REVOCATION OR REFUSAL TO REISSUE A SHELLFISH CERTIFICATE	118
15.15	SHELLFISH BACTERIAL STANDARDS	119
15.16	SHELLFISH CONTAMINATION STANDARDS - BIOTOXINS	119
15.17	SHELLFISH CONTAMINATION STANDARDS – IMPORTED	120
15.18	SHELLFISH TAGGING AND LABELING REQUIREMENTS	120
15.19	BULK TAGGING OF SHELLSTOCK DURING TRANSPORT FROM HARVEST AREA	121
15.20	TAGGING OF SHELLSTOCK DURING INTERMEDIATE PROCESSING	122
15.21	SHUCKED SHELLFISH LABELING	123
15.22	BROKERS	124
15.23	EMBARGO PROCEDURE FOR SHELLFISH	124
15.24	SHIPPING DOCUMENTS AND RECORDS	125
15.25	GENERAL HACCP REQUIREMENTS – HAZARD ANALYSIS	126
15.26	GENERAL HACCP REQUIREMENTS – HACCP PLAN	126
15.27	GENERAL HACCP REQUIREMENTS – CORRECTIVE ACTIONS	128
15.28	GENERAL HACCP REQUIREMENTS - VERIFICATION	129
15.29	GENERAL HACCP REQUIREMENTS - HACCP AND SANITATION STANDARD OPERATING PROCEDURES (SSOP's) RECORDS	130
15.30	GENERAL HACCP REQUIREMENTS - TRAINING	130
15.31	GENERAL SANITATION REQUIREMENTS AND MONITORING	131
15.32	WET STORAGE IN ARTIFICIAL BODIES OF WATER OR NEAR SHORE	131
15.33	ONSHORE WET STORAGE WATER SUPPLY REQUIREMENTS	133
15.34	ONSHORE WET STORAGE USING A RECIRCULATING WATER SYSTEM	135
15.35	WET STORAGE SHELLSTOCK HANDLING	135
15.36	RECALL PROCEDURE	136
15.37	BUYING STATION	136

CHAPTER 16: UNIFORM PHYSICAL PLANT EQUIPMENT AND OPERATION REQUIREMENTS

142

16.01	COMPLIANCE	142
16.02	PHYSICAL PLANT SITE AND ARRANGEMENT	142
16.03	FLOORS	142
16.04	WALLS AND CEILINGS	143
16.05	LIGHTING	143
16.06	HEATING, COOLING AND VENTILATION	143
16.07	WATER	143
16.08	PLUMBING AND RELATED FACILITIES	148
16.09	SEWAGE	150
16.10	INSECT AND RODENT CONTROL MEASURES	150
16.11	PROPER LABELING, STORAGE AND USE OF TOXIC MATERIALS	151
16.12	EQUIPMENT CONSTRUCTION FOR NON-FOOD CONTACT SURFACES	151
16.13	CLEANING OF NON-FOOD CONTACT SURFACES	152
16.14	CONDITION AND CLEANLINESS OF FOOD CONTACT SURFACES	152
16.15	CLEANING AND SANITIZING OF FOOD CONTACT SURFACES	153
16.16	PREVENTION OF CROSS CONTAMINATION	153

16.17	PROTECTION FROM ADULTERANTS	154
16.18	CONTROL OF EMPLOYEES WITH ADVERSE HEALTH CONDITIONS	155
16.19	PERSONNEL	155
16.20	SUPERVISION	156
16.21	SHELLSTOCK AND SHUCKED SHELLFISH STORAGE AND HANDLING.....	156
16.22	SHELL AND WASTE DISPOSAL	157
16.23.	CONVEYANCES USED BY DEALERS TO TRANSPORT SHELLSTOCK	158
16.24	SHELLFISH HARVESTER VESSELS	160
16.25	SHELLFISH SHIPPING CONDITIONS.....	161
16.26	RECEIVING SHELLFISH.....	161
16.26	TRANSPORTATION RECORDS	162
CHAPTER 17: SHUCKER-PACKER		162
17.01	COMPLIANCE	162
17.02	SHUCKER-PACKER.....	162
17.03	RECEIVING CRITICAL CONTROL POINT – CRITICAL LIMITS	162
17.04	SHELLSTOCK STORAGE CRITICAL CONTROL POINT – CRITICAL LIMITS.....	162
17.05	PROCESSING CRITICAL CONTROL POINT - CRITICAL LIMITS	163
17.06	SHUCKED MEAT STORAGE CRITICAL CONTROL POINT - CRITICAL LIMIT.....	163
17.07	HEAT SHOCK/HOT DIP PROCESS.....	163
CHAPTER 18: SHELLSTOCK SHIPPER		164
18.01	COMPLIANCE	164
18.02	SHELLSTOCK SHIPPER.....	164
18.03	RECEIVING CRITICAL CONTROL POINT - CRITICAL LIMITS	164
18.04	SHELLSTOCK STORAGE CRITICAL CONTROL POINT - CRITICAL LIMITS	165
18.06	SHUCKED MEAT STORAGE CRITICAL CONTROL POINT - CRITICAL LIMIT.....	165
18.07	SHELLSTOCK SHIPPING CRITICAL CONTROL POINT	165
CHAPTER 19: RESHIPPER.....		166
19.01	COMPLIANCE	166
19.02	SHELLFISH RESHIPPER	166
19.03	RECEIVING CRITICAL CONTROL POINT - CRITICAL LIMITS	166
19.04	SHELLSTOCK STORAGE CRITICAL CONTROL POINT - CRITICAL LIMITS	166
19.05	SHUCKED MEAT STORAGE CRITICAL CONTROL POINT - CRITICAL LIMIT	167
19.06	STORAGE FACILITY	167
19.07	VEHICLE(S).....	167
CHAPTER 20: DEPURATION		167
20.01	COMPLIANCE	167
20.02	DEPURATION	167
20.03	RECEIVING CRITICAL CONTROL POINT- CRITICAL LIMITS.....	167
20.04	PROCESSING CRITICAL CONTROL POINT – CRITICAL LIMITS	168
20.05	SHELLSTOCK STORAGE CRITICAL CONTROL POINT – CRITICAL LIMITS.....	168
20.06	DEPURATION PROCESS WATER	168
20.07	HARVEST OF SHELLFISH FOR DEPURATION	169
20.08	TRANSPORTATION AND DELIVERY OF SHELLFISH FOR DEPURATION	170
20.09	STATE SEALS	170
20.10	PLANT OPERATING MANUAL.....	170
20.11	PROCESS VERIFICATION	172
20.12	CONDITIONAL PROTOCOL VERIFICATION	172

20.13	RECORDS	174
CHAPTER 21:	RELAYING.....	174
21.01	COMPLIANCE	174
21.02	DEFINITIONS	174
21.03	APPLICATION FOR RELAY PERMIT	176
21.04	HARVESTING	177
21.05	RELAY AREA AND PROCEDURES	177
21.06	PRODUCT SAMPLING AND RELEASE	178
21.07	TRANSPORTATION AND DELIVERY OF SHELLFISH FOR RELAY.....	178
21.08	STATE SEALS	179
21.09	RECORD KEEPING.....	179
CHAPTER 22:	RETAIL SHELLFISH	180
22.01	ENHANCED RETAIL SEAFOOD LICENSE HOLDERS-COMPLIANCE	180
22.02	RECEIVING SHELLFISH.....	180
22.03	PREVENTION OF CROSS CONTAMINATION	180
22.04	RECORDS	181
22.05	SUSPENSION, REVOCATION OR REFUSAL TO REISSUE AN ENHANCED RETAIL SEAFOOD LICENSE 182	
CHAPTER 23:	STANDARDS FOR CLOSURE OF CONTAMINATED OR POLLUTED FLATS....	183
23.01	DEFINITIONS.....	183
23.10	CLOSURE OF POLLUTED AREAS.....	183
23.20	DESIGNATION OF DEPURATION DIGGING AREAS.	183
23.30	CLOSURE OF CONTAMINATED AREAS.	184
23.40	REPEAL OF POLLUTED OR CONTAMINATED AREA CLOSURES.	184
CHAPTER 24:	IMPORTATION OF LIVE MARINE ORGANISMS	184
24.01	DEFINITIONS.....	184
24.03	PROHIBITED ACTIVITY	185
24.05	PERMIT APPLICATION FOR MARINE ORGANISMS	185
24.06	PERMIT APPLICATION FOR SHELLFISH USED AS BROOD STOCK IN HATCHERIES	185
24.07	REQUIREMENTS FOR SHELLFISH HELD AS BROOD STOCK.....	185
24.10	PERMIT ISSUANCE CRITERIA FOR SHELLFISH	186
24.20	HEARING	187
24.	APPENDIX A	188
CHAPTER 49:	SHELLFISH BAIT PERMIT	190
49.01	HARVESTER PERMIT	190
49.05	BAIT DEALER REGULATIONS.....	191
CHAPTER 70:	CABLE AREA PROHIBITIONS	191
70.01	HANCOCK COUNTY, DRAGGING PROHIBITED IN CABLE AREAS.....	191
70.10	WASHINGTON COUNTY, CABLE AREA DRAGGING AND TRAWLING PROHIBITION.....	191
CHAPTER 90:	CONSERVATION AREAS.....	192
90.02	LINCOLN COUNTY	192
CHAPTER 95:	CLOSED AREAS- DUE TO POLLUTION.....	192
CHAPTER 96:	CLOSED AREAS – DUE TO PARALYTIC SHELLFISH POISONING.....	192

CHAPTER 110: MARINE HARVESTING DEMONSTRATION LICENSE.....	192
110.01 DEFINITIONS	192
110.02 MARINE HARVESTING DEMONSTRATION	192
110.03 LIMITATIONS AND PROHIBITIONS	193
110.04 METHODS OF FISHING	193
110.06 VESSEL IDENTIFICATION	193
BUREAU OF MARINE PATROL ROSTER.....	194
MARINE PATROL DIVISION I	194
SECTION 1 – Kittery to Portland	194
SECTION 2 – Portland to Kennebec River.....	194
SECTION 3 – Kennebec River to St. George River.....	195
MARINE PATROL DIVISION II	195
SECTION 4- St. George River to Penobscot River.....	195
SECTION 5 – Penobscot River to Hancock Bridge	195
SECTION 6 – Hancock Bridge to Canadian Border.....	195
PUBLIC HEALTH DIVISION.....	196
SHELLFISH SANITATION/RED TIDE HOT LINE - 1-800-232-4733	196
KOHL KANWIT.....	196
Angel Ripley.....	196
SEAFOOD INSPECTORS.....	196
Melinda Cook.....	196
Arthur Rowe	196
John Fendl.....	196
AREA BIOLOGISTS	196
Denis-Marc Nault.....	196
Hannah Annis	196
Pete Thayer.....	196
Heidi Leighton.....	196
WATER QUALITY-BIOTOXIN MONITORING	196
Alison Sirois.....	196
Meggan Dwyer.....	196
WATER QUALITY - LAMOINE	196
Michael Risoldi.....	196
WATER QUALITY – BOOTHBAY HARBOR.....	197
Cathy Vining.....	197

REQUIRED LICENSES ISSUED BY MARINE RESOURCES FEES

<i>TYPE</i>	<i>FEE</i>
<i>Marine Resource Dealer Licenses</i>	
Wholesale Seafood, no lobsters	\$443.00
Wholesale Seafood Supplemental*	\$87.00
<i>*no purchase w/o a wholesale seafood license</i>	
Retail Seafood	\$122.00
Shellfish Transportation (To Take Out of State)	\$529.00
Shellfish Transportation Supplemental	\$173.00
<i>Marine Harvesting Licenses</i>	
Limited Shellfish Wholesaler *	\$115.00
<i>*Must also be certified</i>	
Commercial Shellfish	\$133.00
Mussel - Dragger	\$265.00
Mussel - Hand	\$133.00
Quahog (Mahogany)	\$128.00

CHAPTER 601-GENERAL PROVISIONS

§6001. Definitions

EDITOR'S NOTE - specific definitions (numbers) have been removed due to those words not being shellfish related.

For the purposes of this Part, the following words shall have the following meanings, unless a different meaning is required by the context.

1. **Aquaculture.** "Aquaculture" means the culture or husbandry of marine organisms by any person.
3. **Bulk pile.** "Bulk pile" means any pile or the contents of any box, barrel or other container.
4. **Buy.** "Buy" means to buy or purchase and includes offering to buy.
6. **Coastal waters.** "Coastal waters" means all waters of the State within the rise and fall of the tide out to the limits of the exclusive economic zone as shown on the most recently published Federal Government nautical chart, but it does not include areas above any fishway or dam when the fishway or dam is the dividing line between tidewater and fresh water.
7. **Commissioner.** "Commissioner" means Commissioner of Marine Resources.

8. Common carrier. "Common carrier" means a vehicle that is:

- A. Operating under authority granted by either the Federal Government or the carrier's home state; and
- B. Transporting goods for hire and the carrier does not own the marine organisms being transported.

9. Conservation. "Conservation" means providing for the development and wise utilization of the state's marine resources, protecting the ultimate supply for present and future generations, preventing waste and implementing sound management programs.

11. Crew member. "Crew member" means any person assisting in operating or attending gear or operating a boat while fishing.

12. Dealer. "Dealer" means any person who buys, sells or distributes any marine organism.

13. Department. "Department" means the Department of Marine Resources.

13-A. Engage. "Engage" means engage or attempt to engage.

13-B. Equipment. "Equipment" means a box, trap, crate, net or other device or machinery used to harvest or store marine organisms.

14. Establishment. "Establishment" means the premises, buildings, structures, facilities and equipment, including vehicles, used in the buying, selling or processing of marine organisms.

16. Fish, the noun. The noun "fish" means all finfish, squid and shrimp, or other marine animal, except lobsters, crabs, shellfish, scallops and marine worms.

17. Fish, the verb. The verb "fish" means to take or attempt to take any marine organism by any method or means.

19. Hermetically sealed. "Hermetically sealed" means a container which has been made airtight by fusion so that no air, gas or spirits can either enter or escape, whether or not the container is sterilized by heat. It does not include friction cover containers or containers requiring refrigeration.

21. Intertidal zone. "Intertidal zone" means the shores, flats or other land between high and low water mark.

22. License. "License" means a document issued by the State to a named person authorizing that person to engage in particular activities. License includes a permit, but does not include a certificate or lease.

24-A. Mahogany quahog. "Mahogany quahog" means a marine mollusk, *Artica islandica*.

25. Marine mollusk. "Marine mollusk" means any marine invertebrate animal of the phylum Mollusca, but shall not include squid or octopi.

26. Marine organism. "Marine organism" means any animal, plant or other life that inhabits waters below head of tide.

27. Marine resources. "Marine resources" means all renewable marine organisms and the entire ecology and habitat supporting those organisms.

- 28. Marine resources' laws.** "Marine resources' laws" means chapter 419 and Part 9 or any other statute authorizing the commissioner or department to undertake any activity, and any regulation authorized by these statutes.
- 29. Marine species.** "Marine species" means all marine animals except lobster, shellfish, marine worms and elvers.
- 32. Permit.** "Permit" means license.
- 33. Person.** "Person" means any individual, firm, corporation or agency or political subdivision of government.
- 34. Personal use.** "Personal use" means for consumption or use by oneself, by members of the immediate family or by invited guests.
- 34-A. Possession.** "Possession" means to have in one's custody or control, either personally or by another who is under one's control.
- 35. Process, the verb.** The verb "process" means handling, storing, cooking, preparing, producing, manufacturing, preserving, packing or other activity which could change the condition or form.
- 35-A. Quahog.** "Quahog" means a marine mollusk, *Mercenaria mercenaria*, commonly called hard shelled clams, and *Artica icelandica*, commonly called mahogany quahogs.
- 37. Retail.** "Retail" means sale, trade or service directly to the consumer for his personal use.
- 39. Sell.** "Sell" means to sell, offer to sell or expose for sale.
- 40. Serve.** "Serve" means the preparation of a marine organism for retail sale or consumption, but does not include shucking shellfish.
- 41. Shellfish.** "Shellfish" means clams, quahogs, oysters and mussels and includes shellstock and shucked shellfish.
- 42. Shellstock.** "Shellstock" means shellfish which have not been removed from their shells.
- 43. Ship, the verb.** The verb "ship" means to send by a common carrier.
- 44. Shucked shellfish.** "Shucked shellfish" means shellfish or parts thereof which have been removed from their shells.
- 45. Sunrise.** "Sunrise" means the time given for sunrise as computed and established for Augusta, Maine, by the Nautical Almanac Office of the United States Naval Observatory for the particular day involved, converted to the legal standard of time in force in the State on that day.
- 46. Sunset.** "Sunset" means the time given for sunset as computed and established for Augusta, Maine, by the Nautical Almanac Office of the United States Naval Observatory for the particular day involved, converted to the legal standard of time in force in the State on that day.
- 47. Suspension.** "Suspension" means the revocation of a license, the right to obtain a license and the privilege to undertake the licensed activity, whether the suspension is temporary or permanent.
- 48. Take, the verb.** The verb "take" means to remove or attempt to remove a marine organism from its natural habitat.

49. Transfer. "Transfer" means to transport by boat on the water.

50. Transport, the verb. The verb "transport" means to move an object from one place to another by any means other than to ship.

53. Vehicle. "Vehicle" means a machine or conveyance, including watercraft and aircraft, used to move or transport marine organisms.

54. Wholesale. "Wholesale" means sale, trade or service that is not directly to a consumer and is not retail.

§6005 Labeling Shellfish

A person who is authorized to hold or possess shellfish under chapter 623 may not label shellfish sold alive using the words "product of Maine" or any other similar words or terms that misleadingly suggest the shellfish was taken from the waters of this State unless the shellfish was in fact taken from the waters of the State.

The sale of shellfish labeled in violation of this section is a deceptive business practice in violation of Title 17-A, section 901. A violation of this section that results in a conviction under Title 17-A, section 901 is considered a conviction for a violation of a marine resources law under section 6351, subsection 1, paragraph A.

CHAPTER 603-DEPARTMENT ADMINISTRATION

§6025 Marine Patrol Officers

1. Appointment. Applicants for the position of a marine patrol officer who qualify under the officer's code and pass the examination administered by the Bureau of Human Resources, may be appointed by the commissioner to hold office under Title 5, chapters 51 to 67 and under the officer's code.

2. Fees and other offices. Except before the District Court, officers are allowed the same fees as sheriffs and their deputies for like service which must be paid to the commissioner for use of the State. Officers may not hold any other state, county or municipal office for which they receive compensation, except elected positions in municipal or county government.

3. Powers and duties. Officers shall enforce all marine resources' laws and may arrest and prosecute all violators. They may serve all process pertaining to marine resources' laws. They shall have jurisdiction and authority in all areas where the laws for which they have responsibility apply. In addition to their specified powers and duties, the marine patrol officers are vested with the authority to enforce all laws of the State and may arrest for violations of any criminal laws. Any officer may require suitable aid in the execution of the duties of his office. Marine patrol officers may receive complete law enforcement training within one year from the date of employment and in-service training privileges at the Maine Criminal Justice Academy.

4. Search powers. Any marine patrol officer, in uniform, may search without a warrant and examine any watercraft, aircraft, conveyance, vehicle, box, bag, locker, trap, crate or other receptacle or container for any marine organism when he has probable cause to believe that any marine organism taken, possessed or transported contrary to law is concealed thereon or therein.

5. Sheriff and police powers as marine patrol officers. A sheriff, deputy sheriff, police officer, constable or inland fisheries and wildlife warden, within their respective jurisdiction, shall be vested with the powers of a marine patrol officer, except the powers provided in sections 6306 and 6434. When an officer acts under this section, the same fees shall be paid for his services to the usual recipient of the officer's fees.

1. Appointment; composition. The Shellfish Advisory Council, referred to in this section as "the council" and established by Title 5, section 12004-I, subsection 57-G, consists of 13 members who are appointed by the commissioner as follows:

- A. Four members who are commercial shellfish license holders, at least 3 of whom must be primarily soft-shell clam harvesters. In making the appointments under this paragraph, the commissioner shall consider up to 6 recommendations from associations representing the interests of persons who harvest shellfish commercially;
- B. Two members who are shellfish aquaculture lease holders. In making the appointments under this paragraph, the commissioner shall consider up to 3 recommendations from associations representing the interests of persons who raise shellfish under aquaculture leases;
- C. One member who represents the interests of municipalities with wastewater treatment systems;
- D. Two members who are licensed wholesale seafood dealers who have been issued a shellfish sanitation certificate pursuant to section 6856, subsection 1. In making the appointments under this paragraph, the commissioner shall consider up to 3 recommendations from associations representing the interests of persons who buy and sell shellfish;
- E. One public member with knowledge of and interest in coastal water quality;
- F. Two members who are municipal shellfish wardens. In making the appointments under this paragraph, the commissioner shall solicit and consider up to 3 recommendations for these 2 appointments from associations representing the interests of persons who protect and help manage municipal shellfish resources; and
- G. One member who has been issued a shellfish depuration certificate under section 6856, subsection 3.

The commissioner shall make appointments so that the composition of the council reflects a geographic distribution along the coast of the State.

2. Purpose. The council shall make recommendations to the commissioner and the joint standing committee of the Legislature having jurisdiction over marine resources matters concerning:

- A. How best to utilize state agencies, municipal governments, the shellfish industry and citizen groups to make improvements to and maintain the quality of the State's coastal waters and to expedite the opening of closed shellfish flats; and
- B. Matters of interest to the State's shellfish industry, including, but not limited to, shellfish resource management, public health protection and the activities and recommendations of a multistate organization that promotes shellfish sanitation.

The council is responsible for bringing forward to the commissioner matters of concern to the shellfish industry and for assisting the commissioner with the dissemination of information to members of the shellfish industry.

3. Term. The term of a member appointed to the council is 3 years, except that a vacancy during an unexpired term must be filled in the same manner as for the original member for the unexpired portion of the member's term. A member may not serve more than 2 consecutive terms.

4. Officers. The officers of the council are the chair, vice-chair and secretary. The term of the officers is one year. The council shall elect a member of the council for each officer position at the first regular meeting of each year.

5. Meeting. The council shall meet at least once a year. It may also meet at other times at the call of the chair or the commissioner. In advance of a meeting of a multistate organization that promotes shellfish sanitation, the council shall meet to discuss matters of interest to the shellfish industry, the department and the multistate organization and to make recommendations as necessary.

6. Compensation. Council members are entitled to expenses according to Title 5, chapter 379, which are paid from the Shellfish Fund established in section 6651.

CHAPTER 605-GENERAL DEPARTMENT ACTIVITIES

Subchapter 2 – Leases and Special Licenses

§6071. Importing of certain marine organisms

1. Live importing for introduction into coastal waters . Except for Atlantic salmon imported by the commissioner, it is unlawful to import for introduction, possess for purposes of introduction or introduce into coastal waters a live marine organism without a permit issued by the commissioner pursuant to subsection 2.

2. Permits and regulations on importing for introduction. The commissioner may grant a permit to import for introduction, possess for purposes of introduction or introduce to the coastal waters a live marine organism if the introduction, importation or possession will not endanger the indigenous marine life or its environment. Prior to granting a permit to introduce a nonindigenous organism, that has not been previously introduced under a permit, the commissioner shall hold a hearing. The commissioner may adopt or amend rules governing the importing and introduction of organisms to the coastal waters and the issuing of permits, to the extent required to prevent the introduction of bacteria, fungus, virus or any other infectious or contagious disease or parasite, predator or other organism that may be dangerous to indigenous marine life or its environment.

2-A. Restricting importation of organism. The commissioner may adopt rules under which the commissioner may restrict the importation of a marine organism from a particular location when the commissioner determines that an organism from that location is or may be diseased or infected in any manner. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

3. Organism and products embargoed and condemned. The commissioner or the commissioner's agent may indefinitely embargo, condemn or order to be destroyed a marine organism or marine organism product either indigenous or imported if:

A. The organism or product is introduced to coastal waters in violation of this section and the commissioner determines that the organism or product is of unsound quality, contains any filthy, decomposed or putrid substance, may be poisonous or deleterious to health or is otherwise unsafe;

B. The organism or product is intended for introduction to coastal waters and the commissioner determines the organism or product is diseased or otherwise in a condition that if introduced to coastal waters could endanger indigenous marine life or its environment; or

C. Handling of the organism or product could result in the introduction of that organism or product to the coastal waters and the commissioner determines the organism or product is diseased or otherwise in a condition that if introduced to coastal waters could endanger indigenous marine life or its environment.

The commissioner shall cooperate with those state and federal agencies having similar responsibility in the protection of public health and in enforcing the order to embargo, condemn or destroy.

If any marine organisms or marine organism product is embargoed, condemned or ordered destroyed, the commissioner or the commissioner's agent shall, as soon as practical, notify the owner in writing of the amount and kind of marine organisms or marine organism product embargoed, condemned or destroyed.

4. Salmon imports prohibited. Except as provided in this subsection and section 9906, it is unlawful to import for introduction into any waters of the State any Atlantic salmon, live or as eggs, that originate in any Icelandic or European territorial waters or any other species of salmon, exclusive of rainbow trout, originating west of the North America continental divide. The commissioner may grant an exemption from the provisions of this subsection for a term not to exceed 2 years, renewable upon application, for legitimate aquacultural projects.

§6072. Research and aquaculture leases

1. Authority. The commissioner may lease areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone, for scientific research or for aquaculture of marine organisms. The commissioner may grant a lease to any person. Except as provided in this Part, the commissioner's power to lease lands under this section is exclusive. For the purposes of this section, the deputy commissioner may serve in the place of the commissioner. For the purposes of this section, the commissioner or the deputy commissioner serving in the place of the commissioner may authorize in writing qualified professional department staff to sign lease documents.

1-A. Lease requirement; finfish and suspension culture. Except as provided in paragraphs B and B -1 and sections 6072-A, 6072-B and 6072-C, it is unlawful for a person who does not have a lease issued by the commissioner under this section to construct or operate in the coastal waters of the State a facility for the culture of finfish in nets, pens or other enclosures or for the suspended culture of any other marine organism.

A. Repealed

B. A person operating a facility in the coastal waters of the State, on or before the effective date of this subsection, for the culture of finfish in nets, pens or other enclosures or for the suspended culture of shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1992 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1992. A registrant whose application under this paragraph is denied shall immediately cease operations at the facility and remove all related structures from the coastal waters of the State.

B-1. A person operating a facility in the coastal waters of the State for the suspended culture of a marine organism other than shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1994 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1994. A registrant whose application under this paragraph is denied shall immediately cease operations at the facility and remove all related structures from the coastal waters of the State.

C. The commissioner may not consider an application for a lease under this section on an area registered under paragraph B or B-1 from a person other than the registrant prior to rendering a final decision on any application submitted by a registrant under paragraph B or B-1.

A person who violates this subsection is subject to a civil penalty, payable to the State, of no more than \$1,000 for each day of the violation.

2. Limitations of lease. The commissioner shall determine the provisions of each lease, provided:

A. A lease shall not exceed a term of 10 years;

B. Repealed

C. Repealed

D. Repealed

E. Except as provided in subsection 13-A, the lease does not result in a person being a tenant of any kind in leases covering an aggregate of more than 500 acres; and

F. No single lease may exceed 100 acres in size.

3. Municipal approval. In any municipality with a shellfish conservation program under section 6671, the commissioner may not lease areas in the intertidal zone within the municipality without the consent of the municipal officers.

4. Applications. The application shall:

A. Be written on forms supplied by the commissioner;

B. Describe the location of the proposed lease area by coordinates or metes and bounds;

C. Identify the species to be cultivated;

D. Repealed

D-1. Characterize the physical and ecological impact of the project on existing uses of the site and any adverse effects on the existing uses of the area, as defined by regulation promulgated by the Commissioner of Marine Resources;

E. Describe the degree of exclusive use required by the project;

F. Include written permission of every riparian owner whose land to the low water mark will be actually used;

G. Include a map of the lease area and its adjoining waters and shorelands, with the names and addresses of the known riparian owners as listed in the municipal tax records;

H. Include an environmental evaluation of the site upon which the decision to seek a lease was made. The evaluation shall include, but not be limited to, bottom characteristics, resident flora, fauna and hydrography of the site if appropriate for the proposed lease;

I. Describe the proposed source of organisms to be grown at the site; and

J. Include a nonrefundable application fee of at least \$100, but not more than \$2,000, the amount to be set by the commissioner depending on the proposed acreage, type of aquaculture proposed and complexity of the application.

4-A. Application information. A person who applies for a lease in an area for which that person has been issued a limited-purpose lease under section 6072-A or an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for a limited-purpose lease or an emergency lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

5. Application review. The commissioner shall review the application and set a hearing date if the commissioner is satisfied that the written application is complete, the application indicates that the lease could be granted and the applicant has the financial and technical capability to carry out the proposed activities.

When the commissioner has determined that the application is complete, the commissioner shall forward a copy of the completed application and notice of hearing to the known riparian owners within 1,000 feet of the proposed lease and to the municipality or municipalities in which or adjacent to which the lease is proposed. A municipality must be granted intervenor status upon written request.

5-A. Department site review. Prior to the lease hearing, the department shall conduct an assessment of the proposed site and surrounding area to determine the possible effects of the lease on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries and all other uses. This information must be provided to the intervenors and made available to the public 30 days before the hearing. As part of the site review, the department shall request information from the municipal harbor master about designated or traditional storm anchorages in proximity to the proposed lease. The commissioner may by rule establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed lease activity. The rules must provide a method of establishing a baseline to monitor the environmental effects of a lease activity. Rules adopted under this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

6. Hearing procedure. Prior to granting a lease, the commissioner shall hold a hearing. The hearing shall be an adjudicatory proceeding and shall be held in the manner provided under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV and the specific procedures of this section.

A. Notwithstanding the provisions of Title 5, section 9052, subsection 1, paragraph A, personal notice of the hearing shall be required to be given only to the lessee and the known riparian owners, the municipal officials of the municipality or municipalities in which or adjacent to which the lease is located and any interested parties that have provided a written request for notification.

B. Under the provisions of Title 5, section 9052, the leasing procedure shall require notice to the general public.

C. The Department of Environmental Protection, the Department of Conservation and the Department of Inland Fisheries and Wildlife must be notified of all lease applications.

7-A. Decision. In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area and may grant the lease if the proposed lease meets the following conditions as defined by rule.

A. The lease will not unreasonably interfere with the ingress and egress of riparian owners.

B. The lease will not unreasonably interfere with navigation.

C. The lease will not unreasonably interfere with fishing or other uses of the area. For the purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years.

D. The lease will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna.

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal governmental agency or certain conserved lands. For purposes of this paragraph, "conserved lands" means land in which fee ownership has been acquired by the municipal government, State Government Or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property.

The Executive Department, State Planning office shall maintain a list of conserved lands. The commissioner shall request this information from the State Planning Office prior to holding a preapplication proceeding.

G. The lease will not result in unreasonable impact from noise or light at the boundaries of the lease site.

H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

The commissioner shall adopt rules to establish noise, light and visual impact criteria under paragraphs G and H, which are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

7-B. Conditions. The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose.

8. Preference. If more than one person applies to lease an area, preference must be given as follows:

A. First, to the person who holds a lease for the area or a portion of the area under section 6072-A and who submitted an application for a lease under this section for the area or a portion of the area before the lease under section 6072-A expired:

B. Second, to the department:

C. Third, to the riparian owner of the intertidal zone in which the leased area is located:

D. Fourth, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and

E. Fifth, to the riparian owner within 100 feet of leased coastal waters.

9. Rents. After consulting with the Director of the Bureau of Public Lands, the commissioner shall determine the rent that must be paid under each lease. The rent must represent a fair value based upon the use of and any structures in the leased area, but in no instance may the rental fee be set at less than \$50 an acre or more than \$100 an acre. The commissioner has the discretion to increase the rental fees for categories of leases. These changes may take effect over the term of a lease. The commissioner also may discount a portion of the rental fee during the first 2 years of operation of a new lease. This discounted rate shall not be less than \$50 an acre.

10. Notification of granted leases after the granting of a lease:

A. The lessee shall record the lease in the registry of deeds of each county in which the leased area is located;

- B. The department shall notify all riparian owners, interveners and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;
- C. The lessee shall mark the leased area in a manner prescribed by the commissioner; and
- D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered confidential business record information for the purposes of section 6077.

11. Monitoring and revocation of leases The department shall monitor a lease under this section on an annual basis. If aquaculture has been conducted in a manner substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease or if any condition of the lease has been violated, the commissioner may initiate revocation proceedings and revoke the lease. A lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. The department shall hold a hearing with public notice prior to revoking any lease.

12. Renewal. The commissioner shall renew a lease if:

- A. The commissioner receives, at least 90 days prior to the expiration of a lease, an application for renewal that includes information on the type and amount of aquaculture to be conducted during the new lease term;
- B. The lessee has complied with the lease agreement during the term of the lease;
- C. The commissioner determines that renewal of the lease is in the best interest of the State;
- D. Except as provided in subsection 13-A, the renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 500 acres; and
- E. The lease is not being held for speculative purposes.

If a person who holds a lease pursuant to this section applies to renew the lease, the lease remains in effect until the commissioner makes a decision on the renewal application. If the renewal is denied, the lease expires 30 days after the date of the commissioner's decision.

When aquaculture has not been routinely or substantially conducted on a lease that is proposed for renewal, the commissioner may renew the lease, as long as the proposed renewal will continue to meet the criteria for approval in subsection 7-A.

A lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. Public notice must be given as required under subsection 6 and a hearing must be held if it is requested in writing by 5 persons. The commissioner may review multiple leases concurrently during the lease renewal process.

A lease renewal application must include a nonrefundable application fee of no more than \$1,500, the amount to be set by the commissioner depending on the type of aquaculture permitted by the lease.

12-A. Transferability. A lease may be transferred to another person for the remaining portion of its term subject to the following conditions.

- A. Lease transfers shall be subject to the same procedural requirements as initial applications, except that a public hearing is not mandatory unless requested in writing by 5 persons.

- B. The commissioner may grant lease transfers if the commissioner determines that:
- (1) The change in lessee does not violate any of the standards in subsection 7;
 - (2) The transfer is not intended to circumvent the intent of subsection 8;
 - (3) The transfer is not for speculative purposes; and
 - (4) Except as provided in subsection 13-A, the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 500 acres.
- C. A lease transfer application must include a nonrefundable application fee of not more than \$5,000, the amount to be set by the commissioner depending on the type of aquaculture permitted by the lease.

13. Regulations. The commissioner may adopt or amend regulations:

- A. Establishing minimum standards for maintaining leases;
- B. For procedures to issue, transfer, review or revoke leases;
- C. For notices and hearings to the extent that those procedures are not established by this section or the Maine Administrative Procedure Act, Title 5, chapter 375;
- D. For regulating the harvest of wild organisms to be cultured on aquaculture leases;
- E. For establishing and revaluing fees and rents related to aquaculture;
- F. For defining application requirements, an application review process and decision criteria; and
- G. For adding or deleting authorization for the holder of an aquaculture lease to grow specific species on the lease site.
- H. For establishing following requirements and procedures.

13-A. Lease acreage increase; fallowing. The commissioner may require a person to submit an annual fallowing plan and a reassessment schedule for that plan to the commissioner that identifies lease sites that have been actively operated during the lease period and that will be fallowed. The commissioner shall review the plan and reassessment schedule and may approve them, reject them or request changes. Revisions to the plan must be submitted in accordance with the reassessment schedule unless the commissioner authorizes an exception due to extraordinary circumstances.

- A. Except as provided in paragraph B, a person may not be a tenant of any kind in leases covering an aggregate of more than 500 acres including fallowed leases at any time.
- B. The commissioner may by rule authorize leases in excess of the 500-acre limit if the commissioner determines that the increase is beneficial for the management of aquaculture and is environmentally and economically appropriate. The commissioner may not authorize a person to be a tenant of any kind in leases covering an aggregate of more than 1,500 acres. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

For purposes of this subsection, “fallow” means a lease site without cultured organisms. A lease site fallowed pursuant to an enforcement action may not be considered fallowed for the purpose of this subsection.

14. Conflicts. Whenever a project described in a pending aquaculture lease conflicts or could conflict with a project described in a pending submerged lands act lease, the commissioner and the Commissioner of Conservation shall determine which project is in the best interests of the State.

15. Rules. The commissioner shall promulgate rules by January 1, 1988, to define a mussel seed size or seed management and harvest season.

17. Restitution. A person who cuts any lines or marker buoys or intentionally damages approved aquaculture gear commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged. In addition, the court shall:

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and

B. Direct that person to provide the commissioner, upon making full payments as ordered by the court, proof of that payment.

§6072-A. Limited-purpose lease for commercial or scientific research

1. Authority. The commissioner may issue a limited-purpose lease for areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for commercial aquaculture research and development or for scientific research. The commissioner or the deputy commissioner acting on the commissioner's behalf may authorize in writing qualified professional department staff to issue a final decision and sign a lease document on an application for a limited-purpose lease. A decision issued by department staff pursuant to this subsection is a final agency action with respect to that lease application.

2. Suspended culture. A person issued a limited-purpose lease under this section may construct or operate in the coastal waters of the State a facility for the culture of finfish in nets, pens or other enclosures or for the suspended culture of any other marine organism.

3. Limit on duration. A limited-purpose lease may not be issued for a period greater than 3 years.

4. Size limitation. A limited-purpose lease may not be issued for an area in excess of 2 acres.

5. Notice of application. Upon determining that an application is complete, the commissioner shall provide notice of a limited-purpose lease application to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The applicant shall provide the names and addresses of known riparian landowners within 1,000 feet of the proposed location of the lease. The names and addresses must be taken from the current property tax roster on file at the local municipal office or with the Department of Administrative and Financial Services, Bureau of Revenue Services for an unorganized territory. The commissioner shall publish a Summary of the application in a newspaper of general circulation in the area proposed for a limited-purpose lease. A person may provide, within 30 days of receipt of notice or within 30 days of publication of a limited-purpose lease summary, to the commissioner comments on the proposed limited purpose lease.

6. Public hearing. The commissioner may hold a public hearing on the proposed limited-purpose lease. The commissioner shall hold a public hearing if 5 or more persons request a public hearing within the 30-day comment periods provided in subsection 5.

7. Notice of public hearing. The commissioner shall provide notice of a public hearing to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The commissioner shall publish notice of a public

hearing in a newspaper of general circulation in the area proposed for a limited-purpose lease at least 30 days before the hearing.

8. Rules; general and lease application. The commissioner may adopt rules to implement the provisions of this section. Within 180 days of the effective date of this section, the commissioner shall adopt rules regarding a limited-purpose lease application. The rules must require an applicant to, at a minimum, meet the requirements of section 6072, subsection 2, paragraph E and subsection 4, paragraphs A, B, C, E, F, G & J. The rules must also require an applicant to provide to the department proof of access to the lease area. If access will be across riparian land, the applicant shall provide to the department the written permission of every riparian owner whose land will be used to access the lease area.

9. Application information. A person who applies for a lease in an area for which that person has been issued an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for an emergency aquaculture lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

10. Assessment of proposed activities. Within 180 days of the effective date of this section, the commissioner shall by rule establish a method for conducting an assessment of the proposed limited-purpose lease site and surrounding area to determine the possible effects of the proposed limited-purpose lease activity on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries. The rules must establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed limited-purpose lease activity. The rules must provide a method for establishing a baseline to monitor the environmental effects of a limited-purpose lease activity.

11. Municipal approval. In any municipality with a shellfish conservation program under section 6671, the commissioner may not issue a limited-purpose lease under this section for the intertidal zone within the municipality without the consent of the municipal officers.

12. Preference. If more than one person applies to lease an area, preference must be given as follows:

- A. First, to the department;
- B. Second, to the riparian owner of the intertidal zone in which the leased area is located;
- C. Third, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and
- D. Fourth, to the riparian owner within 100 feet of leased coastal waters.

13. Decision. The commissioner may grant a lease if a proposed project:

- A. Will not unreasonably interfere with the ingress and egress of riparian owners;
- B. Will not unreasonably interfere with navigation;
- C. Will not unreasonably interfere with fishing or other uses of the area taking into consideration the number and density of aquaculture leases in an area;
- D. Will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
- E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; and

F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally owned state-owned or federally owned beaches and parks or municipally owned, state-owned or federally owned docking facilities.

The commissioner may by rule develop criteria for an applicant to meet the terms of this subsection.

14. Fee. The commissioner shall by rule determine the rental fee for a limited-purpose lease.

15. Conditions. The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.

16. Statement of rights conveyed. The commissioner shall include the following statement in a lease issued under this section: "A limited-purpose lease for scientific research or commercial aquaculture research and development conveys only those rights specified in the lease.

17. Repealed

17-A. Notification of granted leases. After the granting of a limited-purpose lease:

A. The department shall notify all riparian owners, interveners and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;

B. The lessee shall mark the leased area in a manner prescribed by the commissioner; and

C. The lessee shall annually submit to the commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the commissioner are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A. Upon written request, the commissioner shall provide a copy of the public records in the report to the municipality or municipalities in which or adjacent to which the lease is located.

18. Scientific lease renewal. A limited-purpose lease for scientific research may be renewed. A scientific research lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4, but a public hearing is not mandatory unless it is requested in writing by 25 or more persons. The Commissioner may review multiple leases concurrently during the lease renewal process. The commissioner shall renew a limited-purpose lease for scientific research unless the commissioner finds that:

A. The lease holder has not complied with the terms of the limited-purpose lease;

B. Research has not been conducted during the term of the lease; or

C. It is not in the best interest of the State to renew the limited-purpose lease.

19. Commercial lease not renewable. A. limited-purpose lease for commercial aquaculture research and development may not be renewed.

20. Extension of commercial lease. If a person who holds a limited-purpose lease for commercial aquaculture research and development submits an application under section 6072 for that lease area or a

portion of that area before the expiration of that limited-purpose lease, and if the commissioner's decision under section 6072 occurs after the expiration of that limited-purpose lease, the lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072, that person's limited-purpose lease remains in effect until the effective date of the lease issued under section 6072. If the commissioner denies that person a lease under section 6072, that person's limited-purpose lease remains in effect until 30 days after the commissioner's decision.

21. Repealed

22. Monitoring and revocation of leases. The department shall monitor a lease under this section on an annual basis. If aquaculture has been conducted in a manner substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease or if any condition of the lease has been violated, the commissioner may initiate revocation proceedings and revoke the lease. The department shall hold a hearing with public notice prior to revoking any lease. A lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4.

23. Restitution. A person who cuts any lines or marker buoys or intentionally damages approved aquaculture gear commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged. In addition, the court shall:

- A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and
- B. Direct that person to provide the commissioner, upon making full payments as ordered by the court, proof of that payment.

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6072-B. Emergency aquaculture lease for shellfish

1. Authority. The commissioner may issue an emergency aquaculture lease for areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for the emergency aquaculture relocation of shellfish from an area for which a lease has been issued pursuant to section 6072 or section 6072-A when the health and safety of those shellfish are threatened.

2. Limitation. The commissioner may not issue a lease under this section unless:

- A. The applicant holds a lease pursuant to section 6072 or 6072-A;
- B. The applicant demonstrates to the commissioner that the health and safety of shellfish at the leased area are threatened; and
- C. The commissioner determines the relocation of those shellfish to an emergency aquaculture lease area would not threaten the water quality of the receiving waters or the health of marine organisms in those waters.

3. Permission of intertidal land owners. The commissioner may not grant an emergency aquaculture lease unless the applicant obtains the written permission of every owner of intertidal land in, on or over which the emergency aquaculture activity occurs.

4. No fee. The commissioner may not charge a fee for an emergency aquaculture lease.

5. Suspended culture. A person issued an emergency aquaculture lease under this section may construct or operate in the coastal waters of the State a facility for the suspended culture of shellfish.

6. Limit on duration. An emergency aquaculture lease may not be issued for a period greater than 6 months.

7. Extension of emergency aquaculture lease. If a person who holds an emergency aquaculture lease submits an application under section 6072 or 6072-A for all or a portion of that lease area before the emergency aquaculture lease expires, and if the commissioner's decision under section 6072 or 6072-A occurs after the expiration of that emergency aquaculture lease, the emergency aquaculture lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until the effective date of the lease issued under section 6072 or 6072-A. If the commissioner denies that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the commissioner's decision.

8. Public notice. Upon granting an emergency aquaculture lease, the commissioner shall provide notice to the municipality in which the emergency aquaculture lease area is located. Within at least 30 days from granting an emergency aquaculture lease, the commissioner shall publish notice of the emergency aquaculture lease in a newspaper of general circulation in the lease area. The notice must describe the area leased and list any restriction in the leased area.

9. Actions required of lease holder. After being granted an emergency aquaculture lease, a lessee shall:

- A. Record the lease in the registry of deeds of each county in which the leased area is located; and
- B. Mark the leased area in a manner prescribed by the commissioner.

10. Conditions. The commissioner may establish conditions that govern the use of the emergency aquaculture lease area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. A certification from the Department of Environmental Protection that the project will not violate the standards ascribed to the receiving waters classification in Title 38, section 465-B.

11. Rules. The commissioner may adopt rules to establish application requirements, a process for application review and a process for deciding upon lease applications and otherwise implement the provisions of this section.

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6072-C. Limited-purpose aquaculture license

1. License required. A person may not engage in the activities authorized under this section without a current limited-purpose aquaculture license or a lease issued under this Part authorizing the activities.

2. Licensed activities; criteria. The holder of a limited-purpose aquaculture license may utilize approved aquaculture gear in a site in the coastal waters of the State below the mean low-water mark to engage in certain aquaculture activities that meet the criteria established in this subsection and in rules adopted by the commissioner. The license also authorizes unlicensed individuals to assist the license holder in the licensed activities with the written permission of the license holder. The commissioner may issue a limited-purpose aquaculture license for certain aquaculture activities if the following criteria are met:

- A. The proposed activity generates no discharge into coastal waters;
- B. The applicant proposes to utilize aquaculture gear and markings approved by the commissioner in rules adopted pursuant to subsection 8;
- C. The gear, excluding mooring equipment, does not cover more than 400 square feet of area and the gear does not present an unreasonable impediment to safe navigation;
- D. The proposed activity does not unreasonably interfere with the ingress and egress of riparian owners;
- E. The proposed activity does not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases and licensed aquaculture activities in that area; and
- F. The applicant holds no more than 3 other limited-purpose aquaculture licenses issued under this section.

3. Eligibility. A limited-purpose aquaculture license may be issued only to an individual and is a resident license.

4. License limitations. The issuance of a limited-purpose aquaculture license does not constitute the issuance of a lease of an area in, on or under the coastal waters.

5. Application. The application for a limited-purpose aquaculture license must:

- A. Be written on forms supplied by the commissioner;
- B. Identify the species to be cultivated;
- C. Describe the proposed source of organisms to be grown in the approved aquaculture gear;
- D. Describe the location of the approved aquaculture gear deployment by coordinates or metes and bounds;
- E. Include a clear set of plans that includes at a minimum:
 - (1) A location plan with an overhead plan view showing the aquaculture gear deployed at the proposed location. The area occupied by the gear must be drawn to scale on the plan. The location plan must include a north arrow, ebb and flood directions, any federal or local channels and anchorages, any nearby structures and property lines for all riparian owners within 300 feet; and
 - (2) Two gear drawings, one with an overhead plan view and one with a cross-sectional elevation view of the approved aquaculture gear proposed to be used. The gear drawings must be clearly dimensioned and include, at a minimum, mean high-water and mean low-water marks and the dimensions, profiles and materials used in the construction, deployment and securing of the approved aquaculture gear;
- F. Include documentation that riparian landowners within 300 feet of the proposed activity have been notified of the license application and proposed activity; and
- G. Include documentation that the municipal harbor master or appropriate municipal officers have been notified of the license application and proposed activity.

6. Fee. The application fee for a limited-purpose aquaculture license is \$50 and is nonrefundable. All fees collected under this subsection must be deposited in the Aquaculture Research Fund established in section 6081.

7. Prohibition; molesting gear. A person other than a marine patrol officer, the licensed owner of the gear or the licensed owner's assistant, with written permission from the licensed owner, may not utilize, raise, lift, transfer, possess or in any manner molest any approved aquaculture gear that is deployed under a current limited-purpose aquaculture license.

8. Rules The commissioner shall adopt rules to implement this section, including, but not limited to, rules establishing the type of gear that is approved aquaculture gear for the purposes of a limited-purpose aquaculture license, minimum standards for maintaining gear, methods of gear identification and license application and review procedures. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

9. Violation; restitution. A person who violates this section commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged. If a person violates subsection 7 by cutting any lines or marker buoys or intentionally damaging approved aquaculture gear, the court shall also:

- A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and
- B. Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.

§6073. Exclusivity; prohibition or interference

1. Exclusivity. Each lease for aquaculture shall be exclusive for the species and to the extent provided by the commissioner in the lease.

2. Prohibition on interference. It shall be unlawful to interfere with the rights provided in a lease.

2-A. Cultchless American oysters; possession. Prior to the point of retail sale, a person may not possess a cultchless American oyster grown in the State unless that person:

- A. Is a grower licensed under section 6863, an employee of a licensed grower or an agent of a licensed grower; or
- B. Is in the possession of a bill of sale or a bill of lading that includes the license number of the grower.

3. Penalty. Any person who violates subsection 2-A or who knowingly and willfully violates subsection 2 is guilty of a Class D crime, except that, notwithstanding Title 17-A, sections 4-A and 1301, the court shall impose a fine of not less than \$1,000 and restitution may be ordered made to the owner of the lease in an amount set by the court.

§6073-A. Season and minimum size exemption; aquaculture

The holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C is exempt from any requirement regarding the time of taking or possessing, minimum or maximum length or other minimum or maximum size requirement for any marine organism cultivated on the leased area. The exemption applies only to those organisms actually cultivated on the leased area, except that upon harvest of finfish from the leased area pursuant to an aquaculture lease, any finfish of a species that was not cultivated on the leased area but occurred in the enclosure must also be harvested and retained for appropriate disposal

by the holder of a lease. Such finfish may not be sold and may not be released or disposed of into the waters of the State and must be reported to the department at the same time as reports of the harvest are filed. The commissioner shall require a system of identification of organisms exempted under this section.

§6073-B. Harvester license exemption; aquaculture

The holder of a lease issued under section 6072, 6072-A, or 6072-B or a license issued under section 6072-C is exempt from any requirement under sections 6421, 6501, 6748, 6748-A, 6748-D, 6751, 6801-A and 6803 to hold a separate license for the removal, possession, transport or sale of the cultured organisms, except for molluscan bivalve shellfish, from the leased area or the licensed gear.

§6073-C. Harvester license exemption; scallop aquaculture

The holder of a lease issued under section 6072, 6072-A, or 6072-B or a license issued under section 6072-C is exempt from any requirement under sections 6701, 6702 and 6703 to hold a separate license for the removal, possession, transport or sale of scallops from the leased area or the licensed gear when the final product form is the adductor muscle only. This exemption does not apply to scallops in any other form.

§6074. Special license

The commissioner may issue a special license for research, aquaculture or education that exempts the holder from one or more marine resources' laws as to the time, place, length, condition, amount and manner of taking or possessing a marine organism. Except as provided in subsection 8, the commissioner may not issue a special license unless the application for that license is approved by the advisory council.

1. Exception. A special license shall not permit the holder to sell or, beyond the state limits, to ship or transport any marine organism that is less than the minimum size established by statute. This subsection shall not apply to:

A. Repealed

B. Any species grown in a hatchery for stock enhancement or resale for purposes of cultivation or stock enhancement.

2. Application. The application shall include a description of the proposed project including the objectives, the location and the estimated time of completion of the project. The application shall also include a list of the sections of law or regulation for which exemptions are required, and the specific reasons for each requested exemption.

3. Filing fee. Each application shall include a nonrefundable filing fee of \$100. The fee may be waived for research activity by institutions or organizations financed in whole or part by state funding. A filing fee may not be required from a municipality applying for a special license for using a hydraulic dredge under section 6623.

4. Limitation. The special license shall authorize only the individual named in the license to undertake the licensed activities. Any individual engaged in handling or harvesting marine organisms in the licensed project shall be listed on the license or supplemental license. The commissioner may, at any time, place conditions or limitations on the licensed activities which shall become part of the license.

5. Fees. At the time of the initial issuance of a special license, and each year upon renewal, an annual fee must be paid. The annual fee for a special license for no more than 2 individuals is \$50. An annual fee for a special license for more than 2 individuals but no more than 10 individuals is \$100. Additional individuals may be included in a special license in groups up to 10 for an additional \$100 per group. The fee may be waived for research activity by institutions or organizations financed in whole or in part by state funding. A license fee may

not be required from a municipality for a special license for using a hydraulic dredge under section 6623. A license fee may not be required for employees of the department when they are acting in their capacity as employees under the direction of the commissioner or the commissioner's designated representative.

6. Renewal.

A. The initial issuance of each special license must specify the number of times the license may be renewed after the initial issuance. Each license may be renewed at least 4 times. The commissioner, with the advice and consent of the advisory council may authorize renewals if the necessary investment in the research or aquaculture requires additional renewals.

B. The commissioner shall annually renew the license on request for the authorized number of renewals, unless the license holder has not complied with the conditions of the license, or the commissioner finds that renewal is not in the best interest of the State. Renewals do not require a new application or filing fee and do not require the advice and consent of the advisory council.

7. Transportation permits. A transportation permit shall be required for a special license holder to ship, transport or sell any marine organism raised or harvested under a special license. The commissioner may place conditions or limitations on the activities authorized by this permit to the extent necessary to provide proper controls and to comply with federal or state health or sanitation standards. The commissioner shall annually renew the permit on request unless the permit holder has not complied with the conditions of the permit or unless the permit holder no longer holds a special license.

8. Council approval not required. Approval by the advisory council is not required for a special license issued by the commissioner to the following:

A. An employee of the department when the employee is acting under the direction of the commissioner or the commissioner's designated representative;

B. A person who operates an aquarium;

C. A person who operate a festival;

D. A person who undertakes a public service activity;

E. A municipality that operates a hydraulic or mechanical soft-shell clam dredge for municipal transplanting projects under section 6623; or

F. A teacher who is providing a primary or secondary school program.

9. Penalty. An individual who fails to comply with the conditions or limitations on the licensed activity under this section commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

§6076. Marine Shellfish Toxins Monitoring Program

1. Purpose. A comprehensive Marine Shellfish Toxins Monitoring Program is established to protect the public health while providing for the harvest of susceptible species of marine mollusks in areas not shown to be affected by contamination.

2. Responsibilities. The department shall be the state agency responsible for implementing the program. The department may adopt rules under section 6172 as may be warranted to provide for adequate protection of the public health.

SUBCHAPTER 3 -- INSPECTION AND QUALITY CONTROL

§6101. Voluntary Fish Products Inspection Program

- 1. Purpose.** The purpose of this section shall be to increase the availability of fishery product inspection services to Maine processors and packers in order to improve the marketing of fishery products.
- 2. Program.** The department shall be the state agency which shall be responsible for cooperating with the Federal Government in developing and administering a voluntary fishery product inspection program.
- 3. Regulations.** The commissioner may adopt or amend regulations not inconsistent with the National Shellfish Sanitation Program and National Marine Fisheries Services regulations for the voluntary inspection of fishery products.
- 4. Sardines.** The program shall exclude sardines and other fish inspected by the Maine Sardine Council.
- 5. Labeling.** All products inspected under this section shall be accurately labeled to provide the public with information about the contents and quality of the fishery product. The commissioner may adopt regulations to insure proper and complete labeling.
- 6. Misleading labeling prohibited.** It shall be unlawful to sell any article inspected under this section under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size. Established trade names approved by the commissioner are permitted. It shall be unlawful to sell any article not inspected under this section under any name or other marking or labeling which is false and misleading when the mark or label is intended to represent the contents as having been inspected and graded.
- 7. Preventing misleading labeling.** If the commissioner has reason to believe that a violation of subsection 6 is occurring, he may order the withholding of an inspection or grading label or mark.
- 8. Procedure.** The commissioner shall give notice of his withholding order and may give an opportunity for a hearing on the order. The order shall be effective on service or receipt of the notice. The notice shall contain a statement of the violation, the order and any opportunity for a hearing, and shall be personally served on or mailed to the violator. Any hearing shall be requested in writing within 10 days, unless a longer period is mutually agreed to in writing. Notice of the hearing shall be given immediately to the violator.

If a hearing is held, it shall be conducted in the Augusta area. At the hearing, the violator shall be entitled to present any evidence concerning the violation and surrounding circumstances. All decisions of the commissioner shall be in writing. All decisions of the commissioner under this section may be reviewed in the manner provided under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

§6102. Mandatory quality control program

The commissioner may, in accordance with the most modern public health and food protection practices, establish and maintain effective surveillance and inspection of all segments of the state's fishing industries. He may establish a program to carry out this responsibility. The program may include provisions similar to those of section 6856, shellfish sanitation and certificate, and section 6101, voluntary fish products inspection program, including any additional inspection, licensing and certification requirements that are necessary to insure proper sanitation and quality control. The commissioner may adopt or amend regulations prescribing the minimum standards for establishments and for sanitation and quality control of the processing of any marine organism or its products. Each set of regulations shall be based on the particular operational requirements of the species or phase of industry being regulated, and shall conform to the latest state or federal sanitation standards.

§6103. Implementation of fishery product or shellfish inspection programs

The Commissioner of Agriculture, Food and Rural Resources and the Commissioner of Marine Resources shall cooperate in developing and implementing any fishery product or shellfish inspection programs. Those programs must meet the standards established by the Commissioner of Agriculture, Food and Rural Resources under the Maine Food Law.

CHAPTER 607-REGULATIONS

Subchapter 1 – Regulation Powers

§6171. Conservation and propagation of marine organisms

1. Commissioner's powers. The commissioner may investigate conditions affecting marine resources and, with the advice and consent of the advisory council, may adopt or amend such regulations as he deems necessary to promote the conservation and propagation of marine organisms.

2. Limitations. . A regulation authorized under this section may only limit the taking of marine organisms by one or more of the following:

- A. Time;
- B. Method;
- C. Number;
- D. Weight;
- E. Length; or
- F. Location.

2-A. Management plans. . The commissioner may only adopt a management plan or other policy on the conservation or regulation of marine organisms after prior notice and public hearing and with the advice and consent of the advisory council.

3. Emergency regulations. . The commissioner may adopt or amend regulations under the emergency procedures, if immediate action is necessary to protect or conserve any marine organism from unusual damage or imminent depletion. An unusually large concentration of fishermen which might deplete the supply of any marine organism shall justify adopting emergency regulations.

4. Procedure. . The procedures of subchapter II shall be used in adopting or amending regulations authorized by this section.

5. Rules to limit taking of marine organisms. . The commissioner may adopt rules that limit the taking of a marine organism for the purpose of protecting another marine organism.

A. Rules adopted pursuant to this subsection are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

B. If the commissioner determines that for biological reasons a rule adopted under this section must take effect prior to final adoption under paragraph A, the commissioner may adopt the rule as a routine

technical rule pursuant to Title 5, chapter 375, subchapter 2-A. A rule adopted under this paragraph is effective until 90 days after the adjournment of the next regular session of the Legislature. Rules adopted pursuant to this paragraph must also be submitted to the Legislature under paragraph A. The commissioner may not adopt rules under Title 5, section 8054 pursuant to this paragraph.

§6171-A. Protection of public health and safety and prevention of gear conflicts

1. Commissioner's powers. The commissioner may investigate conditions affecting public safety, public health or property and conflicts among harvesters of marine organisms. The commissioner, with the advice and consent of the Marine Resources Advisory Council, may adopt or amend such rules as the commissioner considers necessary to:

- A. Protect public health;
- B. Protect public safety;
- C. Prevent property damage; or
- D. Prevent gear conflicts and promote the optimum development of marine organisms.

Rules adopted in accordance with this subsection may include, but are not limited to, rules governing area closures when necessary to address conflicts among persons who fish commercially that may cause a threat of harm to a person.

2. Limitations. The limitations of section 6171, subsection 2 also apply to rules to prevent gear conflicts.

3. Considerations. In adopting rules to prevent gear conflicts, the commissioner shall consider:

- A. Traditional uses of the marine organisms;
- B. Total economic benefits to the area in which the organisms are harvested; and
- C. Promotion of the optimum economic and biological management of marine resources.

In each case, the commissioner shall accommodate the needs of all interested parties to the maximum extent possible, through provisions for joint use, alternate use or other methods.

4-A. Emergency rules.. The commissioner may adopt or amend rules on an emergency basis if immediate action is necessary to protect the public health or public safety or to prevent property damage or serious economic harm to the area in which marine resources are harvested.

5-A. Procedure. The procedures of subchapter 2 must be used in adopting or amending rules authorized by this section.

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§6172. Contaminated or polluted flats

1. Commissioner's powers. The commissioner may examine the coastal waters and the intertidal zone and classify coastal waters or intertidal zone areas as closed if the commissioner determines that any marine organisms are or may become contaminated or polluted and may classify coastal waters or intertidal areas as open if the commissioner determines that the marine organisms no longer present a risk to public health. The commissioner may classify areas through text descriptions and maps as the commissioner determines

necessary, setting forth standards for closure of contaminated or polluted areas and for opening areas determined to no longer present a risk to public health, giving consideration to established state water quality standards, the most recently adopted federal sanitation standards or other state or federal public health standards, the most recent generally accepted research data and known sources of pollution in any area, in a manner to protect the public health and safety while allowing reasonable use of the State's marine organisms.

1-A. Federal waters. The commissioner may classify an area through text descriptions and maps to close waters under the jurisdiction of the Federal Government to the harvesting of a marine organism that the commissioner determines is or may become contaminated or polluted and to open waters under the jurisdiction of the Federal Government to the harvesting of marine organisms that the commissioner determines no longer present a risk to public health.

1-B. Repealed

2. Repealed

3. Repealed

4. Repealed

5. Private property; right of entry. The commissioner's authority to enter privately owned land or buildings to carry out the purposes of this section is prescribed as follows:

A. The commissioner, upon presentation of credentials, may enter privately owned land at reasonable times with the owner's permission. If entry to the land is denied by the owner, the commissioner may seek a search warrant to inspect the land for sources of pollution under this section. A warrant may not be issued to search a domicile or residential building or ancillary structures; and

B. The commissioner may enter a privately owned domicile, building or structure only with the owner's permission and only in the presence of the owner or the owner's agent.

For the purposes of this subsection, "commissioner" means the Commissioner of Marine Resources or an employee of the department authorized by the commissioner to inspect coastal waters and intertidal zones for sources of pollution.

6. Effective immediately upon signature. The classification of an area as open or closed under this section is effective immediately upon signature by the commissioner or the commissioner's authorized designee.

7. Notification. Notification of the classification of a shellfish area as open or closed and any information concerning the opening or closing of a shellfish area under this section must be placed on the department's publicly accessible website and must be provided to the municipal office of each municipality in the affected area and to the Bureau of Marine Patrol.

8. Enforcement. Upon notification as described in subsection 7, marine patrol officers shall take action to prevent the taking of shellfish from a closed area, including the embargo of contaminated shellfish under section 6856, subsection 6 and the arrest or summons of any person taking or attempting to take shellfish from an area classified as closed unless that person holds a valid depuration certificate pursuant to section 6856, subsection 3.

Subchapter 2 – Regulation Procedure

§6191. Rulemaking

1. Procedures. In adopting or amending any rule, the commissioner shall use the procedures required for rulemaking under the Maine Administrative Procedure Act and the additional requirements of this subchapter.

2. Other requirements.

A. A public hearing may be held but is not required unless it is requested by an interested person.

B. The person conducting the hearing shall record and retain all relevant evidence provided at the hearing.

C. A rule may not be adopted or amended without the advice and consent of the advisory council, except as provided in section 6192, subsection 2.

§6192. Emergency rulemaking

1. Procedures. In an emergency adoption of a rule or amendment to a rule, the commissioner may modify the procedures required under the Maine Administrative Procedure Act and section 6191 in the following manner.

A. In an emergency adoption of a rule or amendment to a rule relating to the public health and safety, including rules authorized under section 6171-A, prior public notice and hearing is not required.

B. In an emergency adoption of a rule or amendment to a rule authorized by section 6171 or 6171-A, the rule is effective immediately, as provided in subsection 4. A public hearing must be held in the affected area after the rule takes effect if requested of the commissioner in writing by 5 persons. The hearing must be held within 30 days of the commissioner receiving the written request. Notice of that hearing must be published once, not less than 5 days prior to the hearing, in a newspaper of general circulation in the affected area. In an emergency adoption of a rule or amendment to a rule relating to gear conflicts, as authorized by section 6171-A, the commissioner shall decide within 5 business days after the hearing whether to continue or repeal an emergency closure. The commissioner's findings of fact must include the justification for the repeal or continuance of the closure, an analysis of the objections expressed at the public hearing and the date for the end of the closure. Emergency rules under this paragraph may be repealed by the Marine Resources Advisory Council.

D. Within 48 hours after the adoption of an emergency rule or an emergency amendment to a rule authorized under section 6171-A, subsection 1, paragraph B or C, the commissioner shall hold a public meeting in the area affected by the emergency rule. A public meeting convened pursuant to this paragraph is not a public hearing for purposes of the Maine Administrative Procedure Act.

2. Advisory council. The advice and consent of the advisory council is not required prior to an emergency adoption of a rule or amendment to a rule.

3. Effective period. Any emergency rule is effective only for 90 days, or any lesser period of time specified in the rule. After the expiration of the emergency period, the rule may be adopted only as provided by section 6191.

4. Effective date. Except as provided in this subsection, emergency rules become effective immediately upon publication in a newspaper of general circulation in the area of the State affected, as long as those rules are submitted to the Attorney General and filed with the Secretary of State as required under the Maine Administrative Procedure Act within the next business day following publication.

5. Repeal. Emergency rules may be repealed in the same manner as they are adopted.

CHAPTER 609-ENFORCEMENT

§6207. Seizure and disposition of equipment and organisms

Any marine organism, that is taken, bought, sold, shipped, transported or found in the possession of any person in violation of any provision of marine resources' laws, is contraband and is subject to forfeiture in accordance with this section and section 6206. All equipment and vehicles used or possessed in violation of any provision of marine resources' laws are contraband and are subject to forfeiture.

1. May be seized without warrant; marine patrol officer's duty to libel; contents of libel. Whenever a marine patrol officer seizes any organism or equipment and does not return them to the owner, he shall within a reasonable time file a libel with a judge. He shall insert the following information in the libel:

- A. The description of the items seized by him;
- B. A statement of the date and place of seizure;
- C. A statement of the violation that causes the seizure; and
- D. A prayer for a decree of forfeiture of those items.

2. Items which need not be libeled. The following items need not be libeled:

- A. If the aggregate value of all items seized is less than \$75, unless there is reasonable doubt as to their ownership; and
- B. All marine organisms of illegal size, shellfish taken from polluted areas, shellfish or shellfish products embargoed, condemned or ordered destroyed by the commissioner, female egg-bearing lobsters, V-notched female lobsters, lobsters which have been mutilated so that their size cannot be determined, female lobsters which have been mutilated so as to obliterate a V-notch, female lobsters which have had the eggs removed by other means than natural hatching, and any other marine organism, the possession of which is unlawful throughout the State.

3. Order of notice; contents. The judge to whom the libel is directed shall fix a time for the hearing of the libel. He shall issue an order of notice to all persons interested, in which order of notice he shall insert the following:

- A. A citation to all persons interested to appear at the time and place appointed for the hearing and show cause, if any, why the items described in the libel should not be declared forfeited to the State;
- B. The time and the place fixed for the hearing; and
- C. An order that a true copy of the libel and the order of the notice, attested by the marine patrol officer, be posted in 2 conspicuous places in the municipality, or place where the items were seized, at least 10 days before the day set for the hearing.

4. Sale or other disposition prior to hearing. If, after receipt of the libel and before the hearing, the judge finds that the items seized will be unsuitable for food or other use, at the day of hearing, he shall order the officer who made the seizure to dispose of them.

A. The officer may then dispose of the items at public or private sale or otherwise.

B. The officer shall hold any proceeds of a sale subject to the decision of the court as to their final disposition.

5. Items or proceeds forfeited if no court appearance; proceeds disposed of in same manner as fines.

If no claimant appears at the time of the hearing on the libel, on return of service of the officer in compliance with the order of notice, the judge shall declare the items forfeited to the State.

A. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds over to the judge who shall dispose of them in the same manner that he disposes of fines collected under marine resources' laws.

6. Duty of claimant to file written claim on or before hearing day; contents. Any person who claims title or the right to possession of any item listed in the libel shall file a written claim with the judge on or before the day set for hearing. The claim shall contain the following:

A. A statement of his claimed title or right and its foundation;

B. A statement of the specific items claimed;

C. A statement of the date and place of the seizure, and the name of the officer by whom they were seized;

D. A statement that the items claimed were not held in possession or use, with his knowledge or consent, in violation of any provision of marine resources' laws;

E. He shall state his business and his place of residence; and

F. He shall sign and make oath to the claim before the judge.

7. Claimant admitted as party; hearing. If any person makes claim as provided in subsection 6, the judge shall admit him as a party to the process, shall proceed to determine the truth of the allegations in the claim and libel and shall hear any relevant evidence offered by the libellant or the claimant.

8. Court order if claimant found entitled to any item claimed. If the judge upon hearing is satisfied that any item listed in the claimant's claim was not, with the claimant's knowledge or consent, used or possessed in violation of any provision of marine resources' laws, and that the claimant has title or is entitled to possession Of that item, he shall give the claimant an order in writing. The judge shall direct the order to the libellant commanding him to deliver the item to the claimant, or, if the item has been sold, to deliver the proceeds of the sale to the claimant, within 48 hours after the demand.

9. Forfeiture; executions for cost; appeal; recognizance. If the judge finds that the claimant is not entitled to any item claimed, the judge shall render judgment against the claimant for the State for costs to be taxed as in civil cases before the judge. The judge shall issue an execution for the costs as in civil cases. The judge shall declare the articles forfeited to the State. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds of the sale over to the judge who shall dispose of them in the same manner he disposes of fines collected under marine resources' laws.

A. The claimant may appeal to the Superior Court next to be held within the county where the judge's court is located, and, if he appeals, the judge may order the claimant to recognize with sureties as on appeals in civil cases.

B. The judge may order that the items or proceeds of sale remain in the custody of the officer pending the appeal.

10. Disposition of forfeited items. The officer shall turn over any articles declared forfeited to the commissioner who shall dispose of them.

11. Report to commissioner. The officer making any seizure under this section shall, within 10 days thereafter, report to the commissioner all the particulars of the seizure, the sale or other disposition, the court action taken and all expenses involved.

CHAPTER 615-GENERAL LICENSE PROVISIONS

§6301. General provisions

1. Resident license. Any individual who has been domiciled in Maine for the 6 months preceding the date of application is eligible for a resident license. A corporation is eligible for a resident license if it has been created and exists under the laws of Maine and it has existed in Maine during the 6 months preceding the date of application. A firm or partnership is eligible if all of its officers or partners have been domiciled in Maine for the 6 months preceding the date of application.

For the purposes of this chapter, a resident is a person who:

- A. If registered to vote, is registered in Maine;
- B. If licensed to drive a motor vehicle, has made application for a Maine motor vehicle operator's license;
- C. If the owner of one or more motor vehicles located within the State, has registered at least one of the motor vehicles in Maine; and
- D. If required to file a Maine income tax return on the previous April 15th, filed a Maine income tax return.

2. Expiration. A license or certificate issued by the commissioner expires on December 31st of the year in which it is issued, except that:

- A. A depuration certificate issued under section 6856 expires on April 30th of each year;
- B. A shellfish license issued under section 6601 expires on April 30th of each year;
- C. A marine worm digger's license issued under section 6751 expires on April 30th of each year;
- D. A shellfish sanitation certificate issued under section 6856 expires on May 31st of each year;
- E. A marine worm dealer's license issued under section 6853 expires on March 31st of each year;
- F. A marine worm dealer's supplemental license issued under section 6853 expires on March 31st of each year;
- G. A retail seafood license issued under section 6852 expires on March 31st of each year;
- H. A wholesale seafood license with a lobster permit issued under section 6851 expires on March 31st of each year;

- I. A wholesale seafood license issued under section 6851 expires on March 31st of each year;
- J. A wholesale seafood license with a sea urchin buyer's permit issued under section 6851 expires on March 31st of each year;
- K. A wholesale seafood license with a sea urchin processor's permit issued under section 6851 expires on March 31st of each year;
- L. A wholesale seafood supplemental license issued under section 6851 expires on March 31st of each year;
- M. A shellfish transportation license issued under section 6855 expires on March 31st of each year;
- N. A shellfish transportation supplemental license issued under section 6855 expires on March 31st of each year;
- O. A lobster meat permit issued under section 6857 expires on March 31st of each year;
- P. A lobster transportation license issued under section 6854 expires on March 31st of each year; and
- Q. A lobster transportation supplemental license issued under section 6854 expires on March 31st of each year;
- R. A wholesale seafood license with a shrimp permit issued under section 6851 expires on March 31st of each year;
- S. An enhanced retail seafood license issued under section 6852-A expires on March 31st of each year;
- T. A seaweed buyer's license issued under section 6803-A expires on March 31st of each year; and
- U. A limited wholesale shellfish harvester's license issued under section 6851A expires on March 31st of each year.

3. Nontransferable. A license or certificate shall not be transferable.

4. Supplemental license. A supplemental license may only be issued for an establishment or vehicle which is owned, leased or rented by the license holder.

5. Information. When application information concerning any person, establishment or vehicle named in a license or certificate changes, the holder shall immediately notify the commissioner in writing within 3 business days or the license or certificate shall become void.

§6302. General exceptions

Notwithstanding any licensing provision, a license or certificate is not required for a person to:

1. Personal use. Possess or transport any marine organism that has been lawfully acquired and is for personal use. A receipt or bill of sale is required for lawful acquisition;

2. Common carrier. Carry any marine organism by a common carrier;

3. Hermetically sealed containers. Buy, sell, ship or transport within or beyond the state limits or possess any marine organism that is in a hermetically sealed container; or

4. Retail sale of certain seafood products. Sell at retail:

A. Shucked shellfish, if the shucked shellfish is purchased from a wholesale seafood license holder certified under section 6856; or

B. Lobster parts or meat, if they are purchased from a wholesale seafood license holder who possesses a lobster meat permit under section 6857 or if they have been lawfully imported.

§6302-A. Taking of marine organisms by Passamaquoddy tribal members

1. Tribal exemption; commercial harvesting licenses. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who is a resident of the State is not required to hold a state license or permit issued under section 6421, 6501, 6502-A, 6505-A, 6505-C, 6535, 6601, 6602, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751, 6803, 6804 or 6808 to conduct activities authorized under the state license or permit if that member holds a valid license issued by the tribe, nation or band or the agent of the band to conduct the activities authorized under the state license or permit. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs issued a tribal license pursuant to this subsection to conduct activities is subject to all laws and rules applicable to a person who holds a state license or permit to conduct those activities and to all the provisions of chapter 625, except that the member of the tribe, nation or band:

A. May utilize lobster traps tagged with trap tags issued by the tribe, nation or band or the agent of the band in a manner consistent with trap tags issued pursuant to section 6431-B. A member of the tribe, nation or band is not required to pay trap tag fees under section 6431-B if the tribe, nation or band or the agent of the band issues that member trap tags;

B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe, nation or band or the agent of the band in a manner consistent with tags issued pursuant to section 6505-B. A member of the tribe, nation or band is not required to pay elver fishing gear fees under section 6505-B if the tribe, nation or band or the agent of the band issues that member elver fishing gear tags; and

C. Is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671.

2. Tribal exemption; sustenance or ceremonial tribal use. Notwithstanding any other provision of law, a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who is a resident of the State may at any time take, possess, transport and distribute:

A. Any marine organism, except lobster, for sustenance use if the tribal member holds a valid sustenance fishing license issued by the tribe, nation or band or the agent of the band. A sustenance fishing license holder who fishes for sea urchins may not harvest sea urchins out of season;

B. Lobsters for sustenance use, if the tribal member holds a valid sustenance lobster license issued by the tribe, nation or band or the agent of the band. The sustenance lobster license holder's traps must be tagged with sustenance use trap tags issued by the tribe, nation or band or the agent of the band in a manner consistent with trap tags issued pursuant to section 6431-B; however, a sustenance lobster license holder may not harvest lobsters for sustenance use with more than 25 traps; and

C. Any marine organism for noncommercial use in a tribal ceremony within the State, if the member holds a valid ceremonial tribal permit issued to the tribal member by the Joint Tribal Council of the Passamaquoddy Tribe or the governor and council at either Passamaquoddy reservation, by the Penobscot Reservation Tribal Council or by the Aroostook Band of Micmacs Tribal Council or its agent.

For purposes of this subsection, "sustenance use" means all noncommercial consumption or noncommercial use by any person within Passamaquoddy Indian territory, as defined in Title 30, section 6205, subsection 1, Penobscot Indian territory, as defined in Title 30, section 6205, subsection 2, or Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2, or at any location within the State by a tribal member, by a tribal member's immediate family or within a tribal member's household. The term "sustenance use" does not include the sale of marine organisms.

A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who takes a marine organism under a license or permit issued pursuant to this subsection must comply with all laws and rules applicable to a person who holds a state license or permit that authorizes the taking of that organism, except that a state law or rule that sets a season for the harvesting of a marine organism does not apply to a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who takes a marine organism for sustenance use or for noncommercial use in a tribal ceremony. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs issued a license or permit under this subsection is exempt from paying elver gear fees under section 6505-B or trap tag fees under section 6431-B and is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who fishes for or takes lobster under a license or permit issued pursuant to this subsection must comply with the closed periods under section 6440.

3. Lobster, sea urchin, scallop and elver licenses; limitations. Pursuant to subsection 1:

A. The Passamaquoddy Tribe and Penobscot Nation may each issue to members of its tribe or nation, as the case may be, up to 24 commercial lobster and crab fishing licenses in any calendar year, including all licenses equivalent to Class I, Class II or Class III licenses and student licenses, but not including apprentice licenses. Licenses issued under this paragraph are subject to the eligibility requirements of section 6421, subsection 5;

A-1. The Aroostook Band of Micmacs or its agent may issue to members of the band up to 10 commercial lobster and crab fishing licenses in any calendar year, including all licenses equivalent to Class I, Class II or Class III licenses and student licenses, but not including apprentice licenses. Licenses issued under this paragraph are subject to the eligibility requirements of section 6421, subsection 5;

B. The Passamaquoddy Tribe may not issue to members of the tribe more than 24 commercial licenses for the taking of sea urchins in any calendar year. Sea urchin licenses must be issued by zone in accordance with section 6749-P;

C. The commissioner shall adopt rules authorizing the Penobscot Nation to issue to members of the nation commercial sea urchin licenses if the commissioner determines that sea urchin resources are sufficient to permit the issuance of new licenses. The commissioner may not authorize the Penobscot Nation to issue more than 24 commercial sea urchin licenses to members of the nation in any calendar year;

C-1. The commissioner shall adopt rules authorizing the Aroostook Band of Micmacs or its agent to issue to members of the band commercial sea urchin licenses if the commissioner determines that sea urchin resources are sufficient to permit the issuance of new licenses. The commissioner may not authorize the Aroostook Band of Micmacs or its agent to issue more than 24 commercial sea urchin licenses to members of the band in any calendar year;

D. The Penobscot Nation may not issue to members of the nation more than 20 commercial licenses for the taking of scallops in any calendar year, except that the commissioner shall by rule allow the Penobscot Nation to issue additional commercial licenses to members of the nation for the taking of scallops if the commissioner determines that scallop resources are sufficient to permit the issuance of new licenses;

D-1. The Aroostook Band of Micmacs or its agent may not issue to members of the band more than 10 commercial licenses for the taking of scallops in any calendar year, except that the commissioner shall by rule allow the Aroostook Band of Micmacs or its agent to issue additional commercial licenses to members of the band for the taking of scallops if the commissioner determines that scallop resources are sufficient to permit the issuance of new licenses;

E. The Penobscot Nation may not issue to members of the nation more than 8 commercial licenses for the taking of elvers in any calendar year, except that the commissioner shall by rule allow the Penobscot Nation to issue additional commercial licenses to members of the nation for the taking of elvers if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses; and

F. The Aroostook Band of Micmacs or its agent may not issue to members of the band more than 8 commercial licenses for the taking of elvers in any calendar year, except that the commissioner shall by rule allow the Aroostook Band of Micmacs or its agent to issue additional commercial licenses for the taking of elvers to members of the band if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses.

The Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs and Department of Marine Resources shall report on the status of the sea urchin, scallop and elver fisheries to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 15th of each even-numbered year.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Sea urchin and scallop handfishing and tender licenses; limitations. The Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs or its agent may not issue a license or permit pursuant to subsection 1 or 2:

A. For the harvesting of sea urchins or scallops by hand unless the license or permit applicant meets the diver competency requirements of section 6531; and

B. For the tending of a person who fishes for or takes scallops or sea urchins by diving unless the applicant meets the safety training requirements of section 6533.

5. Notification. Subsections 1 and 2 do not apply to a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs unless a copy of that member's tribal license or permit is filed with the commissioner by the tribal licensing agency or its agent or a tribal official in accordance with section 6027.

6. License suspension. If a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs issued a license or permit under this section is convicted or adjudicated of a violation for which a license suspension is mandatory under chapter 617, the commissioner shall suspend that member's license or permit for the specified period. If a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs issued a license or permit under this section is convicted or adjudicated of a violation for

which the commissioner may suspend a license, the commissioner may suspend that member's license or permit in accordance with chapter 617.

7. Enforcement. A violation of a marine resources law or rule by a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who is issued a license or permit pursuant to this section must be enforced pursuant to chapter 609. A member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who is issued a license or permit pursuant to this section must possess and exhibit that license or permit in accordance with section 6305 and must comply with the provisions of section 6306 regarding inspections and searches by marine patrol officers for violations related to licensed or permitted activities.

8. Resident of the State defined. For the purposes of this section, "resident of the State" means a member of the Passamaquoddy Tribe, Penobscot Nation or Aroostook Band of Micmacs who is eligible to obtain a state resident license under section 6301, subsection 1.

9. Political subdivision. . Nothing in this section may be construed to indicate that the Passamaquoddy Tribe, the Penobscot Nation or the Aroostook Band of Micmacs is a political subdivision of the State.

10. Agent. . For purposes of this section, an agent of the Aroostook Band of Micmacs is any entity authorized by the Aroostook Band of Micmacs Tribal Council to act on its behalf under this section. The Aroostook Band of Micmacs Tribal Council shall certify to the department any agent it has designated to act on its behalf under this section.

§6303. Application

1. Forms. Application shall be made on forms furnished by the commissioner.

2. Misrepresentation or error. Any license issued through misrepresentation or misstatement shall be void. Any license issued through error shall be void after notice to the holder.

3. Satisfactory answers. Failure or refusal to satisfactorily answer any question on or about the application shall be a basis for denying the application.

§6304. Fees

1. Repealed.

2. Duplication. Licenses that have been lost or destroyed must be reissued at a cost of \$5.

§6305. Possession of license

1. Exhibit on demand. When any person is engaged in an activity which is licensed under marine resources' laws, he shall, on the request of a marine patrol officer or other authorized person, exhibit his license.

2. Prima facie evidence. A failure to exhibit a license within a reasonable time, when requested, shall be prima facie evidence that the person is not licensed.

3. Crew members. If crew members are included in the license for any operation, any bona fide crew member may carry out that operation if the license is in his possession.

§6306. Consent to inspection; violation

1. Consent to inspection. Any person who signs an application for a license or receives a license under this Part has a duty to submit to inspection and search for violations related to the licensed activities by a marine patrol officer under the following conditions.

- A. Watercraft or vehicles and the equipment located on watercraft or vehicles which are used primarily in a trade or business requiring a license under this Part may be searched or inspected at any time.
- B. Any other location where activities subject to this Part are conducted may be inspected or searched during the hours when those activities occur.
- C. A location specified in paragraph B may be inspected at any time if a marine patrol officer has a reasonable suspicion of a violation of this Part.
- D. No residential dwelling may be searched without a search warrant unless otherwise allowed by law.

2. Seizure of evidence. Any person who signs an application for a license or receives a license under this Part has a duty to permit seizure of evidence of a violation of marine resources laws found during an inspection or search.

3. Refusal. Refusal to permit inspection or seizure shall be a basis for suspension of any or all licenses under this chapter.

§6307. Misstatement or misrepresentation

It shall be unlawful to intentionally or knowingly make a misstatement or misrepresentation on an application for a license or certificate.

§6308. Compliance with support orders; license qualifications and conditions

In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by the various acts of the department, applicants for licensure or registration, licensees renewing their licenses and existing licensees must also comply with the requirements of Title 19-A, section 2201.

§6309. Licensees not in compliance with a court order of support; enforcement of parental support obligations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Compliance with a support order" means that the support obligor has obtained or maintained health insurance coverage if required by a support order and is:

(1) No more than 60 days in arrears in making any of the following payments:

- (a) Payments in full for current support;
- (b) Periodic payments on a support arrearage pursuant to a written agreement with the Department of Health and Human Services; and
- (c) Periodic payments as set forth in a support order; and

(2) No more than 30 days in arrears in making payments as described in subparagraph (1) if the obligor has been in arrears for more than 30 days in making payments as described in subparagraph (1) at least 2 times within the past 24 months.

B. "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

2. Noncompliance with a support order. An applicant for the issuance or renewal of a license or an existing licensee regulated by the department under this subpart who is not in compliance with a support order is subject to the requirements of Title 19-A, section 2201.

CHAPTER 617 - LICENSE SUSPENSION

SUBCHAPTER 1 - SUSPENSION PROCEEDINGS

Article 1 - Suspension on Conviction

§6351. Suspension based on criminal conviction or civil adjudication

1. Grounds for suspension. Any of the following is grounds for suspension of a license or certificate issued under this Part:

- A. A conviction for a violation of a marine resources law;
- B. A conviction for a violation of Title 17-A, chapter 31;
- C. A conviction for a criminal offense against a marine patrol officer while that officer is engaged in the performance of official duty; or
- D. A civil adjudication of having violated a marine resources law.

2. Suspension procedure. In order to suspend a license or certificate because of a conviction or adjudication, the commissioner shall follow the procedures of this article.

§6352. Notice

The commissioner shall give notice of a suspension and may give an opportunity for a hearing to the holder.

1. Time of notice. The suspension shall be effective on service or receipt of the suspension notice. Notice shall be given within 60 days of the conviction.

2. Nature of notice. The notice must contain a statement of the conviction, the suspension and any opportunity for a hearing, and must be personally served or mailed to the holder at the address provided in the application for the license or certificate. The notice of suspension must be sent by certified mail to the person at the last known address on record at the department. Any suspension imposed is effective on a specified date not less than 10 days after the mailing of the notification of suspension by the department.

3. Hearing. A hearing shall be requested in writing within 10 days of receipt of a notice. If it is requested, then it shall be held within 10 days of the request, unless a longer period is mutually agreed to in writing. Notice of the hearing shall be given immediately to the holder.

§6353. Hearing

1. Place of hearing. If a hearing is held, it shall be conducted in the Augusta area.

2. Evidence. At the hearing, the holder may present any evidence concerning the violation which might justify reinstatement of his license or certificate, or reduction of the suspension period.

3. Decisions. Decisions of the commissioner must be in writing. The commissioner may reinstate the license or certificate or reduce the suspension period if the commissioner is satisfied that to do so would be in the best interests of justice, except that the commissioner may not reduce suspensions set by statute.

ARTICLE 2 -- Suspension Without Conviction

§6371. Suspension without criminal conviction or civil adjudication

1. Suspension for refusal to allow inspection. Refusal to allow inspection or seizure under section 6306 is grounds for suspension of any licenses issued under marine resources' laws. In order to suspend a license because of a refusal to allow inspection or seizure, the commissioner shall follow the procedures of section 6372.

2. Suspension for refusal to allow a shellfish inspection by a department shellfish inspector. Refusal to allow a shellfish inspection under section 6856 is grounds for suspension of any licenses or certificates issued under marine resources laws. In order to suspend a license or certificate under this subsection, the commissioner shall follow the procedures of section 6372.

3. Suspension for violations. Violation of any section of marine resources' laws is grounds for suspension of any licenses or certificates issued under this Part. In order to suspend a license or certificate for a violation, the commissioner shall follow the procedures for license suspension or revocation in the District Court, as provided under Title 4, chapter 5.

§6372. Procedure for suspending on refusal to allow inspection

Notwithstanding the Maine Administrative Procedure Act, the procedure for suspending a license for refusal to allow inspection or seizure under section 6306 or refusal to allow inspection under section 6852, subsection 2-A or section 6856 is as follows.

1. Initiation and suspension. A marine patrol officer may deliver to the commissioner a written statement under oath that a person has refused to allow inspection or seizure under section 6306. The commissioner, on receipt of the affidavit, shall immediately notify the person in writing that his license has been suspended.

2. Notice. The notice shall state that there is an opportunity for a hearing, if it is requested in writing within 10 days of the notice.

3. Hearing. Any hearing shall be held within 3 business days after receipt of the request for the hearing. A hearing may be held more than 3 business days after the request if the request states in writing that the delay was voluntarily requested by the license holder. The hearing shall be held in accordance with the following provisions of the Maine Administrative Procedure Act, Title 5, and chapter 375:

A. Evidence, Title 5, section 9057, except the issues shall be limited to whether the licensee had a license and whether he refused inspection;

- B. Notice, Title 5, section 9058;
- C. Record, Title 5, section 9059;
- D. Decisions, Title 5, section 9061, except the decision shall be made not more than one business day after completion of the hearing; and
- E. Presiding officer, Title 5, section 9062, subsections 3 and 4, except the presiding officer shall be the commissioner or deputy commissioner.

4. Stay. Upon written request, the commissioner may delay the suspension pending the determination of the original hearing or the appeal, if he finds that suspension will cause undue hardship.

5. Appeal. The decision of the commissioner may be appealed to the Superior Court, if it is filed with the court within 30 days of the decision.

§6374. Procedure for suspending without criminal conviction or civil adjudication

Except as provided in section 6371, subsections 1 and 2, the procedure for suspending a license or certificate for a violation of marine resources law without a criminal conviction or civil adjudication is governed by this section.

1. Initiation and notice. . If the Chief of the Bureau of Marine Patrol delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of marine resources law has been committed, the commissioner shall immediately examine the affidavit and determine if a suspension is necessary. If the commissioner determines based on a preponderance of the evidence that a suspension is necessary, the commissioner shall immediately notify in writing the person who violated the law. The notice must state that there is an opportunity for a hearing, if the person requests the hearing in writing within 10 days of the notice.

2. Hearing. . A hearing requested under subsection 1 must be held within 30 business days after receipt by the commissioner of a request for hearing except that a hearing may be held more than 30 business days after the request if the delay is requested by the person requesting the hearing. The hearing must be held in accordance with the Maine Administrative Procedure Act, except that:

- A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing had a license and whether that person committed a violation of marine resources law; and
- B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under Title 5, section 9062 must be made not more than 10 business days after completion of the hearing.

3. Finding of marine resources violation and suspension. . If the presiding officer of the hearing under subsection 2 finds that a violation of marine resources law has been committed, the presiding officer shall immediately notify the commissioner of the finding, and the commissioner may suspend the license or certificate of the person requesting the hearing. The length of the suspension of the license or certificate may not exceed:

- A. One year from the date of a first finding of a violation under this subsection;
- B. Two years from the date of a 2nd finding of a violation under this subsection; or
- C. Three years from the date of a 3rd or subsequent finding of a violation under this subsection.

4. Prohibition against multiple suspensions. . If the commissioner suspends a license or certificate under this section, the commissioner may not suspend the license or certificate because of a criminal conviction or civil adjudication for the same violation.

5. Appeal. . A decision of the commissioner to suspend a license or certificate pursuant to this section may be appealed to the Superior Court if it is filed with the court within 30 days of the decision.

6. Request for hearing on suspension length; place of hearing. . The license or certificate holder may request a hearing regarding the length of suspension under this section. A hearing must be requested in writing within 10 days from the effective date of the suspension. The hearing must be held within 10 days of the request unless a longer period of time is mutually agreed to in writing. The hearing must be conducted in the Augusta area.

SUBCHAPTER 2 -- Suspension Penalties

§6401. Suspension based on criminal conviction

1. Violation of marine resources' laws. The commissioner may suspend any licenses or certificates issued under this Part if a person is convicted or adjudicated in court of violating any section of the marine resources' laws.

2. Length of suspension. The suspension of a license or certificate may not exceed:

- A. One year from the date of the first conviction or adjudication;
- B. Two years from the date of the 2nd conviction or adjudication; and
- C. Three years from the date of the 3rd or subsequent conviction or adjudication.

3. Applicable standards. Any conviction or adjudication occurring more than 7 years before the last conviction or adjudication may not be counted in determining lengths of suspension.

§6403. Suspension based on refusing inspection or seizure

The commissioner may suspend any and all licenses issued under this Part if the license holder refuses to allow inspection or seizure under section 6306. This suspension may not exceed one year.

§6406. Engaging in activities while under suspension

1. Prohibited acts. It is unlawful for any person whose license is under suspension to:

- A. Engage in any licensed activity;
- B. Give another person permission to raise, lift, transfer or possess lobster traps or cars marked with the suspended person's lobster and crab fishing license number or lobster traps with buoys that carry the color design on file with the suspended license;
- C. Assist a holder of a Class II lobster and crab fishing license as a crew member; or
- E. For any violation occurring on or after the effective date of this paragraph, assist any license holder as a crew member in any activity authorized by the suspended license.

2. Penalty. Violation of this section shall be a Class D crime, except that the court shall impose a fine of not less than \$100 nor more than \$1,000.

§6407. Conviction; juvenile offense; failure to appear

Under this chapter:

- 1. Conviction.** A judgment of guilt shall be considered a conviction during the pendency of appeal;
- 2. Juvenile offense.** A conviction as a juvenile offense shall be considered a conviction; and
- 3. Failure to appear.** Failure to appear in court when properly summoned shall be considered a conviction.

CHAPTER 623 – SHELLFISH, SCALLOPS, WORMS AND MISCELLANEOUS LICENSES

Subchapter 1 – Shellfish

ARTICLE 1 – Licenses

§6601. Shellfish license

- 1. License required.** A person may not engage in the activities authorized under this section without a current commercial shellfish license or other license issued under this Part authorizing the activities.
- 2. Licensed activities.** The holder of a commercial shellfish license may fish for, take, possess or transport shellfish within the state limits or sell shellstock the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail certificate holder under section 6852, subsection 2-A. The holder may also sell shellstock the holder has taken from that license holder's home in the retail trade. This license does not authorize the holder to fish for or take shellfish in violation of a municipal ordinance adopted pursuant to section 6671.

2-A. Licensed activities; aquaculture.

The holder of a commercial shellfish license who is also the holder or authorized representative of a holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C and personnel who are operating under the authority of such a holder of a commercial shellfish license may remove, possess, transport within the state limits or sell cultured shellfish the holder has removed from the leased area or the licensed gear to a wholesale seafood license holder certified under section 6856. Such a holder of a commercial shellfish license may also sell such shellstock from that license holder's home in the retail trade. The department shall establish by rule a means to identify personnel operating under the authority of such a license holder. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

- 3. Eligibility.** A commercial shellfish license may be issued only to an individual who is a resident.
- 4. Personal use exception.** Any person may take or possess no more than 1 peck of shellstock or 3 bushels of "hen" or "surf" clams for personal use in one day without a license, unless municipal ordinances further limit the taking of shellfish. This subsection does not apply to individuals whose ability to obtain a shellfish license has been suspended by the commissioner.
- 5. Fee.** Except as provided in subsection 5-A, the fee for a shellfish license is \$115.

5-A. Exception. The fee for a shellfish license for applicants 70 years of age or older is \$57.50.

6. Definition. For the purposes of this subchapter, "shellfish" means shellstock clams, quahogs other than mahogany quahogs, and oyster shellstock.

7. Repealed

8. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

§6602. Surf clam boat license

1. License required. A person may not use a boat for dragging for the harvesting of surf clams unless that boat carries a current surf clam boat license issued by the commissioner.

2. Licensed activity. A surf clam boat license issued under this section may be used for harvesting surf clams. The holder of a surf clam boat license may also possess or transport surf clams within state limits or sell surf clams the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail certificate holder under section 6852, subsection 2-A. The license also authorizes the captain and crew members aboard the licensed boat when engaged in harvesting surf clams to undertake these activities.

3. Eligibility. A surf clam boat license may be issued only to an individual who is a resident of this State.

4. Exception. In any one day, a person may take or possess not more than 3 bushels of surf clams for personal use without a surf clam boat license.

5. Fee. The fee for a surf clam boat license is \$230.

6. Violation. A person who violates this section commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

ARTICLE 2 – Limits on Fishing

§6621. Closed areas

1. Taking from closed areas. A person may not:

- A. Fish for or take shellfish from any area closed pursuant to section 6172;
- B. Fish for or take shellfish from any area closed pursuant to section 6172 when the person has one or more prior convictions for violating paragraph A;
- C. Possess, ship, transport or sell shellfish taken from any area closed pursuant to section 6172; or
- D. Possess, ship, transport or sell shellfish taken from any area closed pursuant to section 6172 when the person has one or more prior convictions for violating paragraph C.

2. Washing or holding in closed areas. A person may not:

- A. Wash, hold or keep shellfish in any area closed pursuant to section 6172;
- B. Wash, hold or keep shellfish in any area closed pursuant to section 6172 when the person has one or more convictions for violating paragraph A;

C. Possess, ship, transport or sell shellfish washed, held or kept in any area closed pursuant to section 6172; or

D. Possess, ship, transport or sell shellfish washed, held or kept in any area closed pursuant to section 6172 when the person has one or more convictions for violating paragraph C.

3. Exception. This section does not apply to:

A. The taking of shellfish under the authority of section 6856;

B. Repealed

C. Municipal officials, with express written authorization from the commissioner, who are engaging in activities authorized under section 6671. Requests for exception must be submitted to the commissioner in writing stating the activities proposed and the name of the person designated by the municipal officials to supervise those activities. In addition, the municipality shall, at least 24 hours prior to engaging in the activity, notify the department of the time or times the activity authorized under this paragraph will be conducted;

D. The harvesting of shellfish from closed areas designated for purposes of relaying when harvesting is approved in writing by the commissioner consistent with regulations promulgated under section 6856;
Or

E. The harvesting of marine mollusks from closed areas for the use of bait or other uses not meant for human consumption, if the harvesting takes place according to rules adopted by the commissioner. The commissioner may adopt rules that permit the taking, possession, shipping, transportation and selling of marine mollusks for bait or other uses not meant for human consumption, if the rules do not jeopardize certification of the State's shellfish according to the National Shellfish Sanitation Program.

4. Penalty. A person who violates this article commits a Class D crime. The following minimum penalties apply:

A. For the first offense, a fine of not less than \$300; and

B. For subsequent offenses within 10 years from the date of conviction for the first violation, a fine of not less than \$500.

The court may not suspend a fine imposed under this subsection. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

§6623. Method of taking soft shell clams

1. Hand implement only. It shall be unlawful to fish for or take soft shell clams, except by implements operated solely by hand, except as provided in this section.

1-A. Artificial breathing device prohibited. A person may not fish for or take soft shell clams while using an artificial breathing device that allows that person to breathe underwater. This subsection does not apply to the holder of a lease issued under section 6072, 6072-A or 6072-B when fishing for or taking soft shell clams cultivated on the leased area.

2. Special license for dredging. The commissioner may issue a special license, acting in accordance with the procedures set forth in section 6074, subsections 1 to 6, to operate a hydraulic or mechanical soft-shell clam dredge for educational or scientific purposes, for use on an aquaculture lease site or for municipal

transplanting projects. The dredge shall not be used for commercial soft-shell clam harvesting except as authorized in this subsection. The dredge design and proposed operation shall be approved by the commissioner. The operation of the dredge shall not interfere with commercial digging and shall not be used for taking marine worms, lobsters or other crustaceans.

3. Department excepted. This section shall not apply to equipment operated by the department for transplanting under a conservation program or conducting research on shellfish.

§6625. Identification and tagging of shellfish

1. Tagging required. The holder of a commercial shellfishing license issued under section 6601, 6731, 6732, 6745 or 6746 shall identify shellstock the license holder has taken by means of a harvester's tag. The tag must be consistent with the format required by the department under rules adopted to meet this requirement. Each container of shellstock must be tagged in accordance with department rules. The tag must accompany the harvested product while the product is in wholesale or retail commerce within the State.

2. Repealed

3. Rules. The commissioner may adopt or amend rules that establish requirements for shellfish harvesters' tags.

ARTICLE 3 – Shellfish Fund

§6651. Shellfish fund

1. Fees to be paid into fund. Fees from shellfish licenses, mussel hand-raking and boat licenses, shellfish transportation licenses and wholesale seafood licenses must be paid into the Shellfish Fund as follows:

- A. Seventy-four dollars and seventy-five cents from a commercial shellfish license;
- B. One hundred forty-nine dollars and fifty cents from a mussel boat license;
- C. Seventy-four dollars and seventy-five cents from a mussel hand-raking license;
- D. Two hundred ninety-nine dollars from a shellfish transportation license;
- E. Ninety-seven dollars and fifty cents from a shellfish transportation supplemental license;
- F. Two hundred fifty dollars and twenty-five cents from a wholesale seafood license;
- G. Forty-eight dollars and seventy-five cents from a wholesale seafood supplemental license; and
- H. Twenty-eight dollars from an enhanced retail certificate.

The Shellfish Fund may receive any other money, including any other gift, grant or other source of revenue.

2. Uses of fund. The commissioner may expend the money in the Shellfish Fund for management, enforcement, restoration, development and conservation of shellfish and mussels in the intertidal zone or coastal waters and for the costs associated with the Shellfish Advisory Council established by Title 5, section 12004-I, subsection 57-G.

3. Nonlapsing fund. The Shellfish Fund shall not lapse.

ARTICLE 4 – Municipal Conservation Programs

§6671. Municipal shellfish conservation programs

1. Municipal funds. Any municipality may, by vote of its legislative body, raise and appropriate money for the implementation of a shellfish conservation program.

1-A. Municipal fines. In accordance with Title 30-A, section 3001, a fine collected pursuant to this section must be paid to the municipality in which the violation occurred.

2. Municipal program and ordinance. Any municipality may, by vote of its legislative body, adopt, amend or repeal a shellfish conservation ordinance as provided by this section. A municipality may establish a municipal shellfish management committee to administer a municipal program.

3. Shellfish conservation ordinance. The following provisions govern a shellfish conservation ordinance.

A. Within any area of the municipality, a shellfish conservation ordinance may:

- (1) Regulate or prohibit the possession of shellfish;
- (2) Fix the amount of shellfish that may be taken;
- (3) Provide for protection from shellfish predators;
- (4) Authorize the municipal officials to open and close flats under specified conditions; and
- (5) Specify areas of the intertidal zone in which the dragging of mussels may be limited to the degree necessary to support a municipal shellfish conservation program.

B. An ordinance must limit the size of soft-shell clams in accordance with article 5.

C. Except as provided in section 6621, subsection 3, paragraph C, a program or ordinance may not allow surveying, sampling or harvesting of shellfish in areas closed by regulation of the commissioner.

3-A. Shellfish conservation licensing. A shellfish conservation ordinance may fix the qualifications for a license, including municipal residency, subject to the following provisions.

A-1. The following exceptions apply.

- (1) An individual is not required to hold a shellfish license issued by the commissioner under section 6601 in order to obtain a municipal commercial license.
- (2) A municipality may issue licenses under this section regardless of whether or not the area has been closed by the commissioner.
- (3) An individual taking shellfish from a closed area for depuration under a depuration certificate issued by the commissioner is not required to hold a municipal shellfish license.

B. A shellfish conservation ordinance may fix license fees as follows.

- (1) If the ordinance sets a fee of \$200 or less for a resident license, the fee for a nonresident license may not exceed twice the resident fee.

(2) If the ordinance sets a fee of more than \$200 for a resident license, the fee for a nonresident license may not exceed 1 ½ times the resident fee.

C. Application methods and procedures for licenses may be determined by the shellfish conservation ordinance subject to the provisions of this section. Notice of the number and the procedure for application must be published in a trade or industry publication or in a newspaper or combination of newspapers with general circulation that the municipal officers consider effective in reaching individuals affected not less than 10 days prior to the period of issuance and must be posted in the municipal offices until the period of issuance concludes. The period of issuance for resident and nonresident licenses must be the same. Subsequent to the period of issuance, the municipality shall make any resident or nonresident licenses not granted during the period available to residents or nonresidents.

D. Except as otherwise provided in this section, a shellfish conservation ordinance may not discriminate between resident license holders and nonresident license holders.

E. A licensing authority shall provide and reserve a minimum number of commercial licenses for nonresidents. The number of nonresident commercial licenses may not be less than 10% of the number of commercial licenses provided for residents. When the number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required.

F. When 2 or more municipalities have entered into a regional shellfish management agreement pursuant to subsection 7, the combined total number of commercial licenses for nonresidents provided by those municipalities must be a number not less than 10% of the combined total number of commercial licenses issued for residents. When the combined total number of resident commercial licenses is fewer than 10 but more than 5, at least one nonresident commercial license must be provided. When the combined total number of resident commercial licenses is 5 or fewer, nonresident commercial licenses are not required.

G-1. A licensing authority that issues recreational licenses to residents shall also make available to nonresidents recreational licenses. The number of nonresident recreational licenses may not be less than 10% of the number of recreational licenses issued to residents.

For the purposes of this paragraph, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use.

For purposes of this subsection, "licensing authority" means a municipality or 2 or more municipalities that have entered into a regional shellfish management agreement pursuant to subsection 7.

4. Adoption requirements. Shellfish conservation ordinances may be adopted under this section by municipalities or unorganized townships.

A. Prior to adopting an ordinance, a municipality or unorganized township shall raise or appropriate money for a shellfish conservation program.

B. An ordinance proposed by a municipality or unorganized territory under this section must be approved in writing by the commissioner prior to its adoption, except that the commissioner may not withhold approval based on the amount of license fees specified in an ordinance.

C. Unorganized townships may adopt ordinances if:

(1) At least 10 inhabitants have petitioned the county commissioners to adopt the ordinances;

(2) The county commissioners of the townships have held a public hearing with at least 7 days' prior notice in one of the affected townships; and

(3) A majority of the inhabitants eligible to vote voting at referendum approve the ordinances.

The county commissioners act as the municipal legislative body within unorganized townships that have elected to adopt ordinances under this section.

4-A. State parks. The commissioner shall consult with the Commissioner of Conservation in review of any municipal ordinance that affects intertidal areas located within state parks. The commissioner may not approve any ordinance that threatens any important resources or provides insufficient opportunity for recreational shellfish harvesting within state parks.

4-B. Management program approval. The commissioner may adopt rules that set the criteria that municipal shellfish conservation programs and ordinances must meet in order to be approved by the commissioner.

5. Period of ordinance. Ordinances or amendments to an ordinance adopted under this section remain in effect until repealed by the municipality or rescinded by the commissioner. A certified copy of the ordinance or amendment to the ordinance must be filed with the commissioner within 20 days of its adoption. If a copy of the ordinance or an amendment to the ordinance is not filed within 20 days, the ordinance reverts to the ordinance previously in effect until the new ordinance or amendment is filed.

6. Municipality defined. For the purposes of this section, municipality includes:

A. Village corporations; and

B. The combined towns of Yarmouth and North Yarmouth.

7. Joint programs; reciprocal privileges. Municipalities may enter into regional shellfish management agreements with other municipalities and adopt regional shellfish management programs. The agreements, and the programs and ordinances adopted under them, are subject to the same requirements as municipal programs and ordinances. Resident privileges of one municipality in a regional shellfish management agreement may be extended to the residents of other municipalities in the agreement. A regional shellfish management committee comprised of at least one resident from each municipality named in the regional agreement may be established to administer a regional program.

8. Local enforcement. The following provisions apply to enforcement.

A. A municipality that enacts an ordinance under this section is responsible for enforcing it.

B. Any municipal shellfish conservation warden appointed by a municipality to enforce the provisions of this article must be certified by the commissioner within one year of the warden's appointment. The commissioner shall establish a program to provide shellfish conservation training in principles of shellfish conservation, management, enforcement and protection and shall establish standards for certification of municipal conservation wardens upon their satisfactory completion of the training program. The program must include training in sampling techniques for the detection of pollutants and contaminants in shellfish areas. The commissioner may establish by rule procedures for certification, recertification and revocation of certification. The commissioner may revoke a certificate for failure of the warden to comply with performance standards.

C. A certified municipal shellfish conservation warden shall enforce the shellfish ordinances of the municipality employing the warden and, if the warden is authorized by the municipality and meets the training requirements of Title 25, section 2804-I, the warden may arrest all violators. The warden may serve all process pertaining to the ordinance. The warden also has, within that warden's jurisdiction,

The powers of a marine patrol officer provided in section 6025, subsection 4 and the authority to enforce section 6621. All of the powers conferred in this subsection are limited to the enforcement of a municipal shellfish conservation ordinance and section 6621.

At the commissioner's request, a certified municipal shellfish conservation warden may collect samples and otherwise assist the department in the detection of pollutants and contaminants. The commissioner is not required to conduct tests on samples not requested by the commissioner.

10. Criminal Penalty. A person who violates a provision of a municipal ordinance adopted under this section commits a Class D crime punishable by the following fines:

A. For harvesting shellfish from an area closed for conservation purposes:

- (1) For the first offense by a commercial license holder, a fine of not less than \$300;
- (2) For subsequent offenses by a commercial license holder, a fine of not less than \$500 and not more than \$1,500;
- (3) For the first offense by a recreational license holder, a fine of not less than \$100; and
- (4) For subsequent offenses by a recreational license holder, a fine of not less than \$100 and not more than \$500; or

B. For violating any other provision of a municipal ordinance adopted under this section, a fine of not less than \$100 and not more than \$1,500.

The court may not suspend a fine imposed under this subsection or impose a penalty other than the monetary payment of a fine as provided in this subsection. For purposes of this subsection, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use. A fine for a violation of article 5 must be as provided by section 6681.

10-A. Civil Penalty. A person who harvests shellfish without a municipal shellfish license or in violation of a license restriction commits a civil violation for which the following fines may be adjudged:

A. For harvesting shellfish without a municipal shellfish license:

- (1) For commercial purposes, a fine of not less than \$300 and not more than \$1,500. Possession of more than one peck of clams without a license is prima facie evidence of a violation of this subparagraph; and
- (2) For personal use, a fine of not less than \$100 and not more than \$500; and

B. For harvesting shellfish in violation of a license restriction:

- (1) By a commercial license holder, a fine of not less than \$300 and not more than \$1,500; and
- (2) By a recreational license holder, a fine of not less than \$100 and not more than \$500.

The court may not suspend a fine imposed under this subsection or impose a penalty other than the monetary payment of a fine as provided in this subsection. For the purposes of this subsection, "recreational license" means a license that authorizes a person to take or possess shellfish only for personal use.

11. Certificate as evidence. A certificate of the clerk of the municipality or any other custodian of the records of a municipal shellfish conservation ordinance adopted under this section stating what the records of the municipality show is admissible as evidence in all courts as proof of the municipal records. A certificate stating

that the records do not show that a person held a license is prima facie evidence that a person did not hold a license on the date specified in the certificate. A certificate stating that the records show that a shellfish conservation ordinance or portions of an ordinance were in effect on a particular date is prima facie evidence that the ordinance was in effect on the date specified in the certificate. The certified copy is admissible in evidence on the testimony of a municipal shellfish conservation warden that the warden received the certificate after requesting it from the municipality. Further foundation is not necessary for the admission of the certificate.

12. Intertidal mussel harvesting.

With the advice of the municipality, the commissioner may issue a permit to an individual licensed pursuant to section 6746 that authorizes the permit holder to fish for and take mussels from an area designated by the municipality pursuant to subsection 3. The commissioner shall limit the number of permits issued for a designated area to that number the commissioner determines is necessary to achieve the goals of the municipality's shellfish conservation program. The permit may specify limits on the amount of mussels taken, when the mussels may be taken and gear usage and any other conditions necessary for consistency with the shellfish conservation program.

§6673. Municipal shellfish aquaculture permit

A municipality that has established a shellfish conservation program as provided under section 6671 may, consistent with the rights of property owners, issue a municipal shellfish aquaculture permit to a person for the exclusive use of shellfish in a designated area in the intertidal zone to the extreme low water mark within the municipality for the purpose of shellfish aquaculture. Municipal authority to issue a municipal shellfish aquaculture permit under this section does not limit in any way the authority of the commissioner to issue leases in the intertidal zone in accordance with sections 6072, 6072-A and 6072-B.

1-A. Application. A municipality shall review an application for a municipal shellfish aquaculture permit on a form supplied by the municipality. The municipality shall publish a summary of the application in a newspaper of general circulation in the area that would be affected by the permit. A person may provide comments to the municipality on the proposed permit within 30 days of publication of the summary.

Prior to issuing a municipal shellfish aquaculture permit, a municipality shall hold a public hearing if requested in writing by 5 or more persons. The public hearing must be held in accordance with procedures established in ordinances adopted in subsection 3.

2-A. Decision. In evaluating a proposed municipal shellfish aquaculture permit, a municipal officer shall take into consideration the number and density of permits and leases in the area and may issue the permit if the municipal officer finds the proposed project meets the following criteria.

- A. The permit conforms to the municipality's shellfish conservation program.
- B. The permit will not cause the total area under all municipal shellfish aquaculture permits in the municipality to exceed 1/4 of the entire municipal intertidal zone that is open to the taking of shellfish.
- C. Issuing the permit is in the best interests of the municipality.
- D. The permit will not unreasonably interfere with ingress and egress of riparian owners.
- E. The permit will not unreasonably interfere with navigation.
- F. The permit will not unreasonably interfere with fishing or other uses of the area. For purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and is

subject to a pollution abatement plan that predates the permit application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years.

G. The permit will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site affected by the permit and surrounding marine and upland areas to support existing ecologically significant flora and fauna.

H. The applicant has demonstrated that there is an available source of organisms to be cultured for the site affected by the permit.

I. The permit does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal government or conserved lands. For purposes of this paragraph, "conserved lands" means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property.

A municipality shall review the Department of Agriculture, Conservation and Forestry's list of conserved lands compiled pursuant to section 6072, subsection 7-A, paragraph F prior to issuing a municipal shellfish aquaculture permit.

A municipality shall put its findings on each of the criteria listed in this subsection in writing and make those findings available to the public.

3. Municipal shellfish aquaculture permit. Prior to issuing a municipal shellfish aquaculture permit pursuant to this section, a municipality shall adopt ordinances that establish procedures for consideration of permit applications under the decision criteria in subsection 2-A, including but not limited to provisions for a public hearing process. An ordinance proposed by a municipality under this subsection must be approved in writing by the commissioner prior to its adoption.

When approved, a municipal shellfish aquaculture permit must be forwarded to the commissioner. The municipality may charge a municipal shellfish aquaculture permit fee not to exceed \$50 per acre. The municipality may establish conditions and limits on the permit. A municipal shellfish aquaculture permit may be granted for a period of up to 10 years and is renewable upon application by the permittee. The municipality shall monitor and enforce the terms and conditions of a permit.

4. Renewals. A municipality shall give public notice for a municipal shellfish aquaculture permit renewal as required under subsection 1-A, and a hearing must be held if it is requested in writing by 5 or more persons. If a public hearing is required, it must be held in accordance with procedures established in an ordinance adopted under subsection 3. A renewal may be granted as long as the permit continues to meet the criteria of subsection 2-A. The findings of the municipality regarding the criteria in subsection 2-A must be in writing and made available to the public.

§6674. Interference with municipal shellfish aquaculture permits

A person may not knowingly interfere with the ability of a person who holds a municipal shellfish aquaculture permit from carrying out the privileges granted to the permittee under that permit. Except for the permittee, a person may not take shellfish in the intertidal zone in an area that is included in a municipal shellfish aquaculture permit. A person who violates this section commits a civil violation for which a fine of not less than Neither \$100 nor more than \$500 may be adjudged.

§6675. Shellfish reseeding program

The department shall carry out a program of shellfish reseeding. The program shall include such activities as the transplanting of soft shell clams from areas of large concentrations to potentially productive areas, and relaying shellfish otherwise inhibited from attaining optimum market size. The program may be carried out in cooperation with municipal and joint shellfish conservation programs. The department may close areas under section 6171 to protect reseeded flats, including areas subject to municipal shellfish conservation ordinances.

§6676. Summary of municipal ordinances

The department shall prepare a summary description of all municipal shellfish ordinances, which must include, but not be limited to, a listing for each municipality of the license application period, fee structure and number of licenses available to residents and nonresidents. The department shall update the summary and make it available to the public in a manner that the commissioner considers to be effective in reaching the persons affected.

ARTICLE 5 – Soft-shell Clam Management

§6681. Soft-shell clam management

1. Purpose. The Legislature finds that the conservation and wise use of the State's shellfish resource may be enhanced by a 2-inch minimum size limit on possession of soft-shell clam shell stock in combination with other management programs.

The Legislature further finds that management programs should be designed to meet local circumstances as appropriate, but also finds that a minimum size limit to be beneficial must be a uniform standard statewide.

The Legislature intends by this Article to enhance the value of the State's shellfish resource by the institution of uniform standards which can be implemented and enforced statewide.

2. Definition. For the purposes of this subchapter, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft- shelled clam shell stock.

3. Minimum size. A person may not possess soft-shelled clam shell stock whose shells are less than 2 inches in the largest diameter:

- A. If the soft-shelled clams comprise more than 10% but less than 20% of a bulk pile as determined under subsection 4;
- B. If the soft-shelled clams comprise 20% or more of a bulk pile as determined under subsection 4; or
- C. If the soft-shelled clams comprise 20% or more of a bulk pile as determined under subsection 4 and the person has one or more prior convictions for violating paragraph B. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

4. Tolerance. Any person may possess soft-shelled clams that are less than 2 inches if they comprise less than 10% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.[]

5. Enforcement. State, county and municipal wardens and enforcement officers shall enforce this subchapter.

6-A. Penalty. A person who violates this article commits a Class D crime. The following minimum penalties apply:

A. For possession of a bulk pile of shellfish of which 20% or more of the shellfish are smaller than the minimum size established in subsection 3:

- (1) For the first offense, a fine of not less than \$300; and
- (2) For subsequent offenses within 10 years from the date of conviction for the first violation, a fine of not less than \$500.

The court may not suspend a fine imposed under this paragraph; and

B. For possession of a bulk pile of shellfish of which more than 10% but less than 20% of the shellfish are smaller than the minimum size established in subsection 3, a fine not less than \$100 and not more than \$1,000.

7. Sunset. This section shall be reviewed by the joint standing committee of the Legislature having jurisdiction over marine resources in the Second Regular Session of the 113th Legislature. That committee shall report its findings no later than April 1, 1988.

ARTICLE 6 – Water Quality

§6691. Water quality samplers

A commercial shellfish license holder who complies with the shellfish sanitation program's quality assurance and quality control training and certification requirements as administered by the department may serve as a volunteer water quality sampler for the department.

Subchapter 2-A – Quahogs

ARTICLE 1 – Licenses

§6731. Mahogany quahogs

1. License required. Except as provided in subsection 3, a person may not engage in the activities authorized under this section without a current mahogany quahog license.

2. Licensed activities. The holder of a mahogany quahog license may:

- A. Fish for or take mahogany quahogs in any harvesting area indicated on the license;
- B. Possess or transport mahogany quahogs within the State; or
- C. Sell mahogany quahogs that the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail certificate holder under section 6852, subsection 2-A.

The license authorizes crew members aboard the licensee's boat to undertake these activities when engaged in dragging for mahogany quahogs if the licensee is present.

3. Personal use exception. A person may take or possess no more than 3 bushels of mahogany quahogs for personal use in one day without a license.

4. Fee. The fee for a mahogany quahog license is \$111. Fees collected pursuant to this section must be deposited in the General Fund.

5. Conditions. Each licensee may participate in the monitoring program established in section 6731-A within the harvest area indicated on the license. The holder of a mahogany quahog license shall comply with all other conditions of licensing established by the commissioner.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

§6731-A. Mahogany quahog monitoring program

The department shall establish a program to protect the public health by monitoring the levels of paralytic shellfish toxin in mahogany quahogs. The department shall identify harvesting areas, sampling areas and stations needed to achieve this goal in accordance with the following provisions.

1. Harvesting areas. The department shall establish harvesting areas that reflect the demand for taking mahogany quahogs by harvesters from the various regions of the State and the relative location of mahogany quahog beds.

2. Industry groups. For each harvesting area the department shall establish a volunteer industry-based group to select mahogany quahog harvesters to collect samples and transport department personnel to and from sampling areas. Each group shall select and notify the department of the mahogany quahog harvesters who have volunteered for each month's sampling duty in the harvesting area.

3. Sampling. The department shall schedule all sampling runs. A department observer shall be on board each vessel engaged in the sampling activity. The department shall notify the harvester in advance as to the time, location and number of samples to be collected. In the event weekly collection of samples is not feasible, an alternative sampling date may be established by the department. The department shall test for the presence of paralytic shellfish toxin in the samples.

4. Rules. The commissioner may adopt rules, in accordance with the Maine Administrative Procedure Act, necessary to achieve the intent of this section.

5. Mahogany Quahog Monitoring Fund. The Mahogany Quahog Monitoring Fund is established within the department. The commissioner shall use any money credited to the Mahogany Quahog Monitoring Fund for the collection of samples required under this section to monitor the level of paralytic shellfish toxin in mahogany quahogs and to conduct stock assessments of the mahogany quahog resource. All money in the Mahogany Quahog Monitoring Fund is subject to allocation by the Legislature. The Mahogany Quahog Monitoring Fund may not lapse but must carry forward to be used for the same purpose. Nothing in this subsection prohibits the commissioner from using other funds budgeted by the department to carry out the purposes of this section.

6. Stock assessment and report. The department shall conduct stock assessments of the mahogany quahog resource beginning no later than January 1, 2005.

§6732. Other quahogs

1. License required. A person may not engage in the activities authorized under this section without a current commercial shellfish license or other license issued under this Part authorizing the activities.

2. Licensed activities. The holder of a commercial shellfish license may fish for or take quahogs, other than mahogany quahogs, or possess or transport quahogs within the state limits or sell quahogs the holder has taken to a wholesale seafood license holder certified under section 6856.

3. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than Neither \$100 nor more than \$500 may be adjudged.

ARTICLE 2 – Limits on Fishing

§6743. Closed areas

1. Mahogany quahogs from closed areas. A person may not:

A. Fish for or take mahogany quahogs from an area closed pursuant to section 6172; or

B. Possess, ship, transport or sell mahogany quahogs taken from an area closed pursuant to section 6172.

2. Washing or holding in closed areas. A person may not:

A. Wash, hold or keep mahogany quahogs in an area closed pursuant to section 6172; or

B. Possess, ship, transport or sell mahogany quahogs washed, held or kept in an area closed pursuant to section 6172.

3. Exception. This section does not apply to the taking of mahogany quahogs under the authority of section 6856.

Subchapter 2-B – Mussels

§6745. Hand-raking mussel license

1. License required. A person may not engage in the activities authorized under this section without a current mussel license or other license issued under this Part authorizing the activities.

2. Licensed activity. The holder of a hand-raking mussel license may take mussels by hand raking or possess or transport mussels within the state limits or sell mussels the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail certificate holder under section 6852, subsection 2-A.

2-A. Licensed activities; aquaculture. The holder of a hand-raking mussel license who is also the holder or authorized representative of a holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C and personnel who are operating under the authority of such a holder of a hand-raking mussel license may remove, possess, transport within the state limits or sell cultured mussels the holder has removed from the leased area or the licensed gear to a wholesale seafood license holder certified under section 6856. Such a holder of a hand-raking mussel license may also sell such mussels from that license holder's home in the retail trade. The department shall establish by rule a means to identify personnel operating under the authority of such a license holder. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Eligibility. A hand-raking mussel license may be issued only to an individual who is a resident.

4. Exception. In any one day, a person may take or possess not more than 2 bushels of shellstock for personal use without a mussel license.

5. Fee. The fee for a hand-raking mussel license is \$115.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than Neither \$100 nor more than \$500 may be adjudged.

§6746. Mussel boat license

1. License required. A person may not use a boat for dragging for mussels unless that boat carries a current mussel boat license issued by the commissioner.

2. Licensed activity. A boat license under this section may be used for dragging for mussels. The holder of a mussel boat license may also possess or transport mussels within the state limits or sell mussels the holder has taken to a wholesale seafood license holder certified under section 6856 or an enhanced retail certificate holder under section 6852, subsection 2-A. The license also authorizes the captain and crew members aboard the licensed boat when engaged in dragging for mussels to undertake these activities. A mussel boat license does not authorize the holder to fish for or take mussels in violation of a municipal ordinance adopted pursuant to section 6671.

2-A. Licensed activities; aquaculture. The holder of a mussel boat license who is also the holder or authorized representative of a holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C and personnel who are operating under the authority of such a holder of a mussel boat license may remove, possess, transport within the state limits or sell cultured mussels the holder has removed from the leased area to a wholesale seafood license holder certified under section 6856. Such a holder of a mussel boat license may also sell such mussels from that license holder's home in the retail trade. The department shall establish by rule a means to identify personnel operating under the authority of such a license holder. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Eligibility. A mussel boat license may be issued only to an individual who is a resident.

4. Exception. In any one day, a person may take or possess not more than 2 bushels of shell mussels for personal use without a mussel license.

5. Fee. The fee for a mussel boat license is \$230.

6. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than Neither \$100 nor more than \$500 may be adjudged.

§6746-A. Night prohibition

A person may not fish for or take mussels pursuant to section 6746 between sunset and sunrise within the territorial waters except that the commissioner may authorize the harvest of seed mussels during those times.

§6747. Closed areas

1. Taking from closed areas. A person may not:

A. Fish for or take mussels from an area closed pursuant to section 6172; or

B. Possess, ship, transport or sell mussels taken from an area closed pursuant to section 6172.

2. Washing or holding in closed areas. A person may not:

A. Wash, hold or keep mussels in an area closed pursuant to section 6172; or

B. Possess, ship, transport or sell mussels washed, held or kept in an area closed pursuant to section 6172.

3. Exception. This section does not apply to:

A. The taking of mussels under the authority of section 6856.

CHAPTER 625 – WHOLESALE AND RETAIL LICENSES

§6851. Wholesale seafood license; wholesale seafood license with lobster permit; wholesale seafood license with urchin permit, wholesale seafood license with shrimp permit

1. License required. A person may not engage in the activities authorized under this section without a current:

A. Wholesale seafood license;

B. Supplemental wholesale seafood license; or

C. Other license issued under this Part authorizing the activities.

2. License activities. The holder of a wholesale seafood license may, in the wholesale or retail trade:

A. Within or beyond the state limits, buy, sell, process, ship or transport any marine species or their parts, except lobsters and sea urchins and shrimp purchased directly from harvesters;

B. Within or beyond the state limits, buy, sell, shuck, pack, ship or, within the state limits, transport fresh or frozen shellfish, except lobsters, to the extent these activities are expressly authorized by a shellfish certificate issued under section 6856; or

D. Buy, sell, process, ship or, within the state limits, transport crayfish.

A holder of a wholesale seafood license when buying directly from a harvester may buy only from a harvester who possesses the license or permit for that species as required under this Part. The harvester shall make the applicable marine resources license or permit available for inspection upon the wholesale seafood license holder's request.

3. Exceptions. This section does not apply to smoked herring or river herring.

4. License limited. A license under this section authorizes activities at only one establishment or with only one vehicle, but not on a vessel rigged to fish, provided that this license also authorizes the sale and transportation of scallops from any vessel. The limitation in this subsection does not apply to holders of licenses issued under section 6421 when they are transporting lobsters on the vessel they have declared on their lobster license application.

5. Supplemental license. A supplemental license must be obtained for each additional establishment or vehicle.

6. Fees.

A. Three hundred eighty-five dollars for a wholesale seafood license or a wholesale seafood license with a lobster permit, sea urchin buyer's permit, shrimp permit or sea urchin processor's permit; and

B. Seventy-five dollars for each supplemental license.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than Neither \$100 nor more than \$500 may be adjudged.

§6851-A. Limited wholesale shellfish harvester's license

1. License required. A person may not engage in the activities authorized under this section without a current commercial shellfish license issued under section 6601.

2. Licensed activity. A holder of a limited wholesale shellfish harvester's license may, within or beyond the state limits, sell, ship or transport in the wholesale trade only shellfish the holder has taken.

3. License limited. A limited wholesale shellfish harvester's license authorizes activities under this section at only one establishment and with only one vehicle.

4. Fee. The fee for a limited wholesale shellfish harvester's license is \$100.

§6852. Retail seafood license

1. License required. A person may not engage in the activities authorized under this section without a retail seafood license issued under this Part authorizing the activities.

2. License activity. The holder of a retail seafood license may, in the retail trade, buy, sell, transport, ship or serve:

- A. Shellstock if bought from a wholesale seafood license holder certified under section 6856;
- B. Repealed
- C. Repealed
- D. Crayfish; or
- E. Lobsters.

A holder of a retail seafood license when buying directly from a harvester may buy only from a harvester who possesses the license or permit for that species as required under this Part. The harvester shall make the applicable marine resources license or permit available for inspection upon the retail seafood license holder's request.

2-A. Enhanced retail certificate authorized. . The holder of a retail seafood license may obtain an enhanced retail certificate from the department. The holder of an enhanced retail certificate may, in the retail trade within the state limits, buy, sell, transport, ship or serve:

- A. Shellstock bought from a commercial shellfish license holder licensed under section 6601;
- B. Shellstock bought from a surf clam boat license holder licensed under section 6602;
- C. Shellstock bought from a mahogany quahog license holder licensed under section 6731; or
- D. Shellstock bought from a hand-raking mussel license holder licensed under section 6745 or a mussel boat license holder licensed under section 6746.

For the purposes of inspection or collection of samples, the commissioner or the commissioner's agent may access an establishment or part thereof or vehicle in which activities authorized under this certificate are conducted by a person holding a retail seafood license. Denial of access is grounds for suspension or revocation of a retail seafood license under the provisions of section 6372.

3. License limited. A license authorizes activities pursuant to subsection 2 at only one establishment or with only one vehicle.

3-B. Certificate limited. . An enhanced retail certificate authorizes activities pursuant to subsection 2-A at only one establishment.

4. Fee. The fee for a retail seafood license under subsection 1 is \$122. The fee for an enhanced retail certificate under subsection 2-A is \$28 and must be deposited in the Shellfish Fund under section 6651

5. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than Neither \$100 nor more than \$500 may be adjudged.

6. Rules. The commissioner may adopt or amend rules that establish requirements for retail seafood license holders and enhanced retail certificate holders concerning:

- A. The minimum sanitation standards for establishments and vehicles;
- B. The sanitation and quality control standards for shellfish and whole scallops and their products;
- C. The methods for handling, shipping and transporting of shellfish and whole scallops;
- D. The records and reports of purchases, shipping and transporting of shellfish and whole scallops;
- E. The labeling or marking of shipments of shellfish and wholesale scallops; and
- F. The protection of public health.

Rules adopted pursuant to this subsection must be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data and must be designed to protect the public health and safety while allowing reasonable use of shellfish and whole scallops. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§6852-B. Retail sale of certain seafood products Notwithstanding any provision of law to the contrary, a license or certificate is not required for a person to sell at retail:

1. Shucked shellfish. Shucked shellfish, if the shucked shellfish is purchased from a wholesale seafood license holder certified under section 6856; or

2. Lobster parts or meat. Lobster parts or meat, if they are purchased from a wholesale seafood license holder with a lobster permit, from the holder of a lobster processor license or from an individual permitted under section 6857 or if they have been lawfully imported.

§6855. Shellfish transportation license

1. License required. A person may not engage in the activities authorized under this section without a current:

- A. Shellfish transportation license; or

B. Supplemental shellfish transportation license.

2. License activity. The holder of a shellfish transportation license may buy certified shellfish and transport them beyond the state limits, to the extent these activities are expressly authorized by a shellfish certificate or its equivalent from another state.

3. License limitations. All shellfish transported under this license must be procured from a wholesale seafood licensee certified under section 6856. A license authorizes these activities with only one vehicle owned, leased or rented by the license holder.

4. Supplemental license. A supplemental license must be obtained for each additional vehicle.

5. Information required. Each application must identify each vehicle or other mode of transportation to be used for transporting shellfish.

6. Fees. The fee for a shellfish transportation license is \$460 and the fee for a supplemental license is \$150.

7. Violation. A person who violates this section commits a civil violation for which a forfeiture of not less than Neither \$100 nor more than \$500 may be adjudged.

§6856. Shellfish sanitation and depuration certificate

1. Shellfish sanitation certificate. A person may not undertake the processing, buying, selling, shipping, transporting or shucking of shellfish or whole scallops without a shellfish sanitation certificate unless authorized under section 6701 or 6702. The commissioner may issue a shellfish sanitation certificate to a wholesale seafood license holder, a limited wholesale shellfish harvester's license holder or a shellfish transportation license holder that authorizes the holder to undertake the activities expressly authorized therein, which may include buying and selling, shipping, transporting, shucking or other processing of shellfish or whole scallops. A wholesale seafood license, limited wholesale shellfish harvester's license or shellfish transportation license is also necessary to undertake the activities authorized under those licenses.

2. Express authorizations. The commissioner shall expressly state the authorized activities on each shellfish sanitation certificate. The activities authorized must be sufficient to allow the holder to carry out the holder's wholesale or transportation operations, except that the operations may be limited to the extent required to protect the public health.

3. Depuration certificate. A person may not take shellfish from closed areas for depuration, processing and transportation without a depuration certificate. The commissioner may issue a depuration certificate to a wholesale seafood license holder that authorizes the holder to take shellfish from closed areas for depuration, processing and transportation. The certificate must establish limits on harvesting, depurating and processing methods and any other provisions required to ensure the public safety. The commissioner may permit depuration of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during depuration will not contaminate the shellfish with paralytic shellfish poisoning. To ensure consistency with municipal shellfish conservation programs, established pursuant to section 6671, the commissioner must obtain the approval of the municipal shellfish conservation committee before taking action to open an area within that municipality for depuration digging. The commissioner may continue to issue controlled purification certificates for areas that were restricted to depuration digging on September 1, 1989, without consulting municipalities.

3-A. Repealed

3-B. Repealed

3-C. Repealed

3-D. Soft-shelled clam depuration harvesting in municipalities with municipal shellfish conservation programs. Soft-shelled clam depuration activities conducted within a municipality that has a municipal shellfish conservation program pursuant to section 6671 are subject to the following provisions.

A. Using the following general guidelines to identify whether pollution abatement activities are likely to succeed in a shellfish growing area, the commissioner may close a shellfish growing area for municipal pollution abatement activities.

(1) Pollution abatement activities are likely to succeed in shellfish growing areas affected by identified failing residential septic systems and other identified localized sources of human or animal fecal contamination when funding for abatement is available.

(2) Pollution abatement activities are not likely to succeed in shellfish growing areas affected by wastewater treatment plant outfall or other point sources of treated or partially treated sewage unless complete removal of pollution sources has been achieved.

(3) Abatement activities are not likely to succeed in shellfish growing areas affected by chronic nonpoint source contamination from rivers or streams.

At the request of the municipality, the commissioner may allow soft-shelled clam depuration harvesting in a shellfish growing area closed under this paragraph.

B. In conducting depuration harvesting activities under this subsection, a person holding a depuration certificate shall engage commercial harvesters holding valid municipal and state commercial shellfish licenses. If there are insufficient municipally licensed commercial harvesters, the depuration certificate holder may supplement with other commercial shellfish harvesters licensed in the State.

C. A depuration certificate holder shall maintain a generalized depuration management plan on file with the commissioner that sets forth methods for identifying harvest limits, operational procedures for harvest management and responsibilities of authorized representatives.

D. A depuration certificate holder shall pay each municipality an amount equal to 50¢ for each bushel of soft-shelled clams taken in that municipality under the depuration certificate. When submitting payment to a municipality under this paragraph, the depuration certificate holder shall include a summary of reports submitted to the department pursuant to rules adopted under subsection 4.

4. Rules. The commissioner may adopt or amend rules concerning:

A. The procedures for issuing certificates and the required qualifications for each type of certificate;

B. The minimum sanitation standards for establishments and vehicles;

C. The sanitation and quality control standards for shellfish and whole scallops and their products;

D. The methods for taking, handling, shipping, transporting and processing of shellfish and whole scallops taken from closed areas;

E. The records and reports of takings, purchases, processing, sales, shipping and transporting of shellfish and whole scallops;

F. The labeling or marking of shipments of shellfish and whole scallops; and

G. Other rules necessary to the public health.

The rules must be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data, in a manner so as to protect the public health and safety while allowing reasonable use of the State's shellfish and whole scallops.

5. Right of entry. Whenever a certificate has been issued under this section, the commissioner, or the commissioner's agent, must have access to any establishment or part thereof for the purpose of inspection or collection of samples. Denial of access is grounds for suspension or revocation of any certificate or license under the provisions of section 6373.

6. Products embargoed and condemned. The commissioner, or the commissioner's agent, shall indefinitely embargo, condemn or order to be destroyed any shellfish, shellfish product or whole scallop in any establishment whenever it is determined that the product is of unsound quality, contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health or otherwise unsafe. The commissioner and the commissioner's agent shall cooperate with those state and federal agencies having similar responsibility in the protection of public health and in enforcing the order to embargo, condemn or destroy.

In the event that any shellfish, shellfish product or whole scallop in any establishment is embargoed, condemned or ordered destroyed, the commissioner, or the commissioner's agent shall, as soon thereafter as practical, notify the owner in writing of the amount and kind of shellfish, shellfish product or whole scallop embargoed, condemned or destroyed.

§6863. Cultchless American oyster grower's license

A person may not grow cultchless American oysters in the State unless licensed under this section.

1. Definitions. For the purposes of this Part, the term "cultchless" means the absence, at the shell hinge, of foreign material or a scar and the term "American oyster" means the genus and species *Crassostrea virginica*.

2. License. The commissioner shall establish by rule the criteria for a cultchless American oyster growers license.

3. Fee. The annual fee for a cultchless American oyster grower's license is \$10.

4. Penalty. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

CHAPTER 627 - GENERAL PROHIBITIONS

§6953. Stopping for inspection; penalty

It shall be unlawful for the operator of a motor vehicle, boat, vessel, airplane or conveyance of any kind, or any person:

1. Stopping. To fail or refuse to stop immediately upon request or signal of any marine patrol officer in uniform;

2. Remaining stopped. After he has so stopped, to fail to remain stopped until the marine patrol officer reaches his immediate vicinity and makes known to that operator the reason for the request or signal;

3. Standing by. To fail or refuse to stand by immediately for inspection on request of any marine patrol officer in uniform;

4. Throwing or dumping items. Who has been requested or signaled to stop by a marine patrol officer in uniform to throw or dump into any water any marine organism, or any pail, bag, barrel or other container of any type, or the contents thereof, before the marine patrol officer has inspected the same.

Violation of this section shall be a Class E crime, except that the court shall impose a fine of not less than \$100.

§6954. Dragging in cable area

1. Violation. It is unlawful to operate any watercraft when towing a drag or trawl in any waters that are identified or marked as underwater cable or pipeline areas, either as shown on the most recently published United States Government nautical chart or as shown or described by rule adopted by the commissioner. The commissioner may make rules showing or describing the locations of underwater cables or pipelines that are not identified on the most recent United States Government nautical charts. A drag or trawl must be lifted out of the water to transit the cable area.

2. Penalty. A violation of this section is a Class D crime, except that the minimum fine shall be \$500 and may not be suspended.

§6954-A. Dragging and scalloping prohibited in the Frenchboro area

1. Violation. Unless permitted by rules adopted under subsection 1-A, a person may not:

A. Take scallops by any means within the Frenchboro area; or

B. Operate any watercraft when towing a drag or trawl within the Frenchboro area. A drag or trawl must be lifted out of the water to transit the cable area.

For purposes of this section, "the Frenchboro area" means the following area: starting at the easternmost point on Red Point, Swan's Island; thence in an easterly direction to the southernmost point of the western Sister's Island; thence in a southeasterly direction to the southernmost point of Crow Island; thence in a southerly direction to the northernmost point of Harbor Island, Frenchboro, Long Island; thence southerly to the state ferry terminal located on the eastern side of Lunt's Harbor, Frenchboro, Long Island, and then starting at the westernmost point of Gooseberry Point on Frenchboro, Long Island; westerly to the northeast point of John's Island; thence northwest to the easternmost point of the largest of the Baker Islands; thence northwesterly to the northeastern point of Harbor Island, Swan's Island; thence northerly to Quarry Wharf, Minturn, Swan's Island.

1-A. Scalloping permitted by rule. The commissioner may adopt and amend rules permitting the taking of scallops in the Frenchboro area, as defined in subsection 1, except that the rules may not permit the use of drags more than 30 inches wide and may not permit the use of drag ropes more than 3/8 inch in diameter.

2. Penalty. A violation of this section is a Class D crime, except that the minimum fine shall be \$500 and may not be suspended.

§6954-C. Drag limits north of international bridge, Lubec

1. Gear requirements. It is unlawful to fish in the territorial waters northerly and inshore of the international bridge that connects Lubec to Campobello Island, New Brunswick, Canada with any drag or combination of drags:

A. That measures in excess of 5 feet, 6 inches in width measuring from one extreme outside edge of the mouth of the drag or combination of drags to the opposite extreme outside edge; and

B. If used for the taking of scallops, that is greater than 8 rings deep.

2. Violation. Notwithstanding section 6174, a person who violates this section commits a civil violation for which the following penalties apply:

A. For the first offense, a mandatory fine of \$500 is imposed and all scallops on board may be seized;

B. For the 2nd offense, a mandatory fine of \$750 is imposed and all scallops on board may be seized;
And

C. For the 3rd and subsequent offenses, a mandatory fine of \$750 is imposed and all scallops on board may be seized. The penalty imposed pursuant to this paragraph is in addition to the penalty imposed under section 6728-B.

§6956. Diver's down flag required

A person licensed to harvest a marine species by hand must display a diver's down flag when using a self-contained underwater breathing apparatus to harvest that species. For the purposes of this section, "diver's down flag" means the International Code Flag "A" as defined in navigation rules adopted by the United States Coast Guard. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

§6957. Fishing near floating equipment

1. Prohibition. A person may not operate a vessel using drags, otter trawls, pair trawls, beam trawls, scottish seines or midwater trawls to fish for or take finfish, shellfish, sea urchins or any other marine organisms within 300 feet of any suspended culture floating cages, tray racks or other floating equipment authorized in a lease issued by the commissioner under section 6072, 6072-A or 6072-B, or a license issued under section 6072-C, if the equipment is marked in accordance with subsection 1-A.

1-A. Markings. The owner of a suspended culture floating cage, tray rack or other floating equipment shall mark the area in which a vessel is prohibited under subsection 1 with at least 4 anchors, each marked by a yellow buoy at least 2 feet in diameter.

2. Penalty. A violation of subsection 1 is a Class D crime, except that, notwithstanding Title 17-A, section 1301, the court shall impose a minimum fine of \$1,000 that may not be suspended.

CHAPTER 629 – GREAT SALT BAY MARINE SHELLFISH PRESERVE

§6961. Great Salt Bay marine shellfish preserve

1. Designation; prohibition. The Great Salt Bay is designated as a marine shellfish preserve in which the harvesting of any shellfish species and other harvesting activities involving bottom disturbance are prohibited, except that the commissioner may authorize research activities in the area.

2. Great Salt Bay defined. For the purposes of this section, "Great Salt Bay" means the tidal portion of the Damariscotta River in the towns of Damariscotta, Newcastle and Nobleboro that is north of a line extending between 2 points of land located 600 yards north of the U.S. Route 1 highway bridge.

3. Research activities. This section does not apply to research activities in the Great Salt Bay that are authorized by the commissioner.

4. Taking of finfish. Nothing in this section may be construed to limit the taking of finfish from the Great Salt Bay.

SHELLFISH REGULATIONS

WARNING: While we have taken care with the accuracy of the files accessible here, they are not "official" state rules in the sense that they can be used before a court. Anyone who needs a certified copy of a rule chapter should contact the APA Office. The address and phone numbers are given below.

APA Office
Maine Administrative Procedure Act (A.P.A.)
Department of Secretary of State
Bureau of Corporations, Elections and Commissions
101 State House Station, Augusta, ME 04333-0101
Don Wismer, Administrative Rules Coordinator (207/624-7650)
FAX 207/287-6545

Chapter 2: Aquaculture Lease Regulations

SUMMARY AND DISCLAIMER

These regulations prescribe the procedures and substantive criteria governing consideration of aquaculture lease applications submitted to the Commissioner of Marine Resources pursuant to 12 M.R.S.A. §6072. The regulations set forth procedural requirements for all aspects of the adjudicatory aquaculture lease application and administration process, consistent with the requirements of 12 M.R.S.A. §6072 and the Maine Administrative Procedures Act, 5 M.R.S.A. §9051 *et seq.*

Due to the fact that this chapter emphasizes finfish aquaculture, we have chosen not to include it in this publication. Please consult DMR Regulation Chapter 2 for information on shellfish aquaculture information.

Chapter 4 Certification, Recertification, Revocation of Certification for Municipal Shellfish Conservation Warden

4.10 Certification

- A. A person shall request certification as a municipal shellfish conservation warden by applying in writing to the Department of Marine Resources.
- B. Upon receipt of an application for certification, the Department of Marine Resources will either accept or deny, or accept with conditions, the request for certification. Written notice of the department's decision will be forwarded to the applicant within 30 days of the receipt of the application. Reasons for any denial will be stated in writing and shall be based upon the considerations set forth in Chapter 4.40(A) (1 through 7). If the Department's acceptance is conditional, the applicant shall comply with the conditions set forth in the acceptance, which shall include, but not be limited to, the requirements of Chapter 4.10(D) below. Applicants may not enforce shellfish ordinances as municipal wardens until the Department of Marine Resources has approved their application and has granted certification.
- C. Wardens who will carry a firearm or who will have the power of arrest must provide proof of certification from the Maine Criminal Justice Academy in order to achieve Departmental certification.

D. Any applicant wishing to become a municipal shellfish conservation warden must attend and complete the next available Department of Marine Resources Conservation Course. Applicants are required to successfully complete the Department of Marine Resources Conservation Course, including a written examination, in order to achieve Departmental certification. Wardens who are taking the course for recertification will not be required to take the full written examination, but may be asked to take a quiz at their refresher training session.

E. Certification will be valid indefinitely, provided that the warden involved attends a review session offered by the Department of Marine Resources at least every 3 years and the warden is otherwise in good standing under Chapter 4.20, 4.30 and 4.50. Failure to complete a refresher training session shall result in loss of certification unless the warden has received a waiver from the Department allowing the warden to extend his (her) certification period.

F. Applicants submitting an application for certification agree to a background check. The Marine Patrol will conduct background checks on all applicants.

(1) Applicants who are active police officers will have background checks done only for conservation violations.

4.20 Minimum Qualifications

A person must meet the following minimum qualifications for certification as a municipal shellfish conservation warden:

A. The warden must have a high school diploma or the equivalent. This requirement will be waived for municipal wardens who were certified prior to the effective date of this rule (March 19, 2001).

B. The warden must have a valid motor vehicle operator's license. If the applicant has an out of state license, a Maine license must be obtained as prescribed under Maine law.

C. The warden must be 21 years of age or older.

D. The warden must not have been convicted of a violation of any marine resource law or regulation enacted or adopted under Title 12 of the Maine Revised Statutes Annotated, within the last six years. A person may make application for consideration to the Commissioner of the Department of Marine Resources or designee for a waiver of this provision.

E. The warden must have no convictions for Murder, Class A, Class B, Class C, Class D or Class E crime, unless the act committed was a Class D or E crime and a violation of Title 12 Maine Revised Statute Annotated and was committed prior to the last six years. A person may make application for consideration to the Commissioner of the Department of Marine Resources or their designee for a waiver of this provision.

F. The warden must not falsify or misrepresent any information during the application process or background investigation.

G. The warden must be able to read and write at a level necessary to successfully complete the Department of Marine Resources Municipal Warden Conservation Course.

4.30 Recertification

- A. Should certification not be renewed or maintained, or should it be allowed to lapse for any reason, the person must apply in writing to the Department of Marine Resources for recertification.
- B. The warden must complete a Departmental refresher training session before recertification can be given under this section.

4.40 Revocation, Suspension or Refusal to Renew Certification

A. The Commissioner of the Department of Marine Resources may refuse to renew or may deny a certification of a warden if one or more of the following has occurred:

- (1) The warden has failed to meet the performance standards as set forth in Chapter 4.50;
- (2) The provisions and requirements imposed pursuant to 25 M.R.S.A. §§2806 have not been satisfied;
- (3) The warden has violated any Marine Resources laws or regulations enacted or adopted under 12 M.R.S.A.;
- (4) The conditions imposed under any conditional certification have not been, or will not be, satisfied;
- (5) The warden fails to successfully complete the required certification training;
- (6) The warden does not meet, or no longer meets, the minimum qualifications set forth in Chapter 4.20 above. Or
- (7) The warden has not complied with the requirements set forth in Chapter 4.30.

B. The Commissioner of the Department of Marine Resources may take lawful action to revoke, suspend or refuse to renew a municipal shellfish warden's certification where any of the events described in Chapter 4.40 have occurred. Any suspension, revocation or refusal to renew a municipal shellfish warden certificate pursuant to Chapter 4.40 shall be subject to prior notice and an opportunity for a hearing in accordance with 5 M.R.S. Chapter 375, subchapter 4. A municipal shellfish warden's last known mailing address may be obtained from the warden's most recent application for certification on file with the Department.

4.50 Performance Standards

All municipal shellfish conservation wardens shall:

- A. Enforce the municipality's shellfish conservation ordinance in accordance with the law;
- B. Enforce the two-inch clam law (12 M.R.S. §6681), contaminated and polluted flats (12 M.R.S. §§6172 and 6621) and to serve all processes pertaining to the local municipal ordinance.
- C. Adhere to principles of effective law enforcement to include, but not limited to:

- (1) Proper use of force;
- (2) Adherence to rules of evidence and legal procedure; and
- (3) Proper use of arrest and summoning powers.

Chapter 5: Confidentiality of Fishery Statistics

5.01 Definitions

In addition to the definitions set forth in 12 M.R.S.A. §6001, the following definitions shall apply in interpretation of Chapter 5.

- A. “Commissioner” means the Commissioner of the Maine Department of Marine Resources.
- B. “Department” means the Maine Department of Marine Resources.
- C. “Data”, “statistics”, and “information”. The terms are used interchangeably and mean fisheries data reported to, or collected by, the Commissioner in accordance with the provisions of 12 M.R.S.A. §6173.

5.10 Collection and Maintenance of Statistics

A. Submission of statistics

All statistics reported by any dealer, harvester, business, person or vessel to the Commissioner shall be provided to authorized personnel of the Department.

B. Collection agreements

1. The Commissioner may enter into an agreement with a state or federal agency authorizing that agency to collect statistics on behalf of the Commissioner.
2. The Department shall not enter into a cooperative collection agreement with another state or federal agency unless that agency has authority to protect the statistics from disclosure to the public in a manner similar to that of the Department and in a manner consistent with these regulations.

C. Safeguards

Appropriate safeguards and a control system as specified by Department directives or other Department internal procedures, shall apply to the collection and maintenance of all statistics so as to insure their confidentiality.

1. The control system instituted to protect the confidentiality of statistics shall:
 - (a) Identify those persons who have routine access to the statistics;
 - (b) Contain procedures to identify non-routine users and their use of data; and
 - (c) Provide for safeguarding the data.

5.20 Access to Statistics

A. Authorized Department personnel

Statistics, which may reveal the identity of any dealer, harvester, business, person or vessel, shall only be accessible to:

1. Department personnel responsible for the collection, processing and storage of the statistics;
2. Department personnel performing research that requires routine access;
3. Other Department personnel on a demonstrable need-to-know basis; and
4. Department contractors who require access in order to perform functions authorized by the state contract.

B. Access to statistics pursuant to collection agreement

Personnel of a state or federal agency, which is a party to a collection agreement with this Department, may have access to statistics collected pursuant to that collection agreement, provided that the statistics will be protected from disclosure to the public in a manner consistent with these regulations.

5.30 Release of Statistics

A. The Commissioner shall not disclose to the public any statistics in other than aggregate or summary form. Disclosure as required by court order shall be made only after approval of the Attorney General.

1. Data, statistics, or information in aggregate or summary form means the combined data of three or more submitters. The data shall be assembled in such a manner as not to reveal the identity of any dealer, harvester, business, person or vessel.
2. When data is such that it cannot be provided in aggregate or summary form, then that data may only be released to the extent it is determined, by authorized Department staff, that its release will not reveal the identity of any dealer, harvester, business, person or vessel, or written permission for the release of the data has been obtained from the submitter(s).

B. All requests for statistics submitted shall be processed consistent with the Maine Freedom of Access law (1 M.R.S.A. §401 *et seq.*).

1. Authorized Department personnel have the authority to issue initial denials of requests subject to the Maine Freedom of Access law for statistics.
2. Appeals from initial denials should be addressed to the Commissioner, Department of Marine Resources, State House Station 21, Augusta, Maine 04333-0021.

5.35 Prohibitions

Persons having access to confidential data are prohibited from unauthorized use or disclosure of such data.

5.40 Identification and Tagging of Shellfish

Each harvester licensed by the Department shall securely affix to each container he has harvested a tag which will contain all information necessary to trace the shellfish back to a specific harvest area.

- A. The harvester's tag shall contain legible information arranged in the order that follows:
1. The harvester's name
 2. The harvester's Department license number
 3. The date of harvesting
 4. the most precise identification of the harvest area
 - a. f o r clams, oysters, and mussels, identification must be by town and geographic area (rivers, coves or bays)
 - b. o f f -shore vessels fishing mahogany quahogs must provide identification as to the bay (if appropriate) and/or harvesting zones described by the Department
- B. The harvester shall affix the tag to each container of shellstock. This shall be done prior to landing unless the harvest has occurred at more than one harvest location; then each container shall be tagged at the harvest location.
- C. The tag shall be fabricated from durable waterproof material and be no less than 2-5/8 by 5-1/4 inches in size. The harvester is responsible for providing his own tags.
- D. In the instance where a certified dealer is also a harvester; the dealer's shipping tag may also be used as the harvester's tag.

Chapter 7 Requirements for Municipalities having Shellfish Conservation Programs

SUMMARY:

This rule provides procedures to be used in developing and maintaining a municipal shellfish conservation program.

7.10 Definitions

In addition to the definitions set forth in 12 M.R.S. §6001, the following definitions shall apply in interpretation of Chapter 7.

1. "Shellfish" means shellstock clams (surf clams, razor clams and soft-shelled clams; 12 M.R.S. §6001(41)), quahogs other than mahogany quahogs, and oyster shellstock (12 M.R.S. §6601(6)).
2. "Municipal Conservation Closures" means an area closed to shellfish harvesting by a municipality or regional program under a municipal ordinance and a municipal management plan, with permission from the Department, separate from the Growing Area classification, for specific reasons, such as, but not limited to, shellfish seeding, flat rotation or winter harvesting.
3. "Shellfish Management Plan" is a written description of the biological measures used to accomplish the management provisions in the municipal shellfish conservation ordinance, including but not limited to an annual review, budget, and objectives for the following year.

4. "Municipal Shellfish Conservation Ordinance" means a shellfish conservation program formally adopted by a municipality in accordance with 12 M.R.S. §6671(2) and (4) and follows the management provisions in accordance with 12 M.R.S. §6671(3).

5. "Municipal Shellfish Transplant Permit" means a permit issued to a municipality or regional program by the Department to possess undersized shellfish from areas classified as approved, conditionally approved, restricted, conditionally restricted or prohibited. The permit allows the municipality or regional program to possess undersized shellfish for the purpose of reseeding shellfish areas. In the absence of a permit, the harvesters and the municipal or regional program are in violation of 12 M.R.S. §6681.

6. "Period of issuance" means any twelve month period designated by the municipality, unless a municipality chooses to limit the number of licenses it issues in which case it shall mean the first 90 days during which a municipality issues shellfish harvest licenses each calendar year.

7.20 Shellfish Management Plan

1. Any municipality that implements a municipal shellfish conservation program as authorized under 12 M.R.S. §6671, must, with the assistance of the Department of Marine Resources (Department), prepare and adopt a shellfish management plan which consists of:

A. A written statement of goals and objectives the municipality plans to achieve as a result of its conservation program; and

B. A description of the various conservation measures the municipality intends to employ to reach those goals. The measures may include but are not limited to licensing, limiting the number of shellfish harvesters, restricting the time (hours, days or portion of the year) and area where harvesting is permitted, limiting the minimum size of shellfish taken, establishing a minimum size where a state minimum does not exist or establishing a more conservative minimum size, limiting the species or amount of shellfish taken daily by a class of harvester, transplanting or seeding of shellfish, protecting the resource from predators by fencing, trapping or other means.

2. The Shellfish Management Plan must be accepted by the Department prior to the Departments' approval of a Municipal Shellfish Conservation Ordinance.

7.30 Management Responsibilities

Municipalities that have an approved Municipal Shellfish Conservation Ordinance shall meet the requirements under 12 M.R.S. §6671 and the goals, objectives and conservation measures outlined in their Shellfish Management Plan; and they must implement the requirements outlined in this section. The municipality may appoint or elect a shellfish conservation committee to assist the municipality in executing its responsibilities. Municipal responsibilities include:

1. Establishing annually with approval from the Department at least 30 days prior to the period of issuance the number, type and fees of shellfish harvesting licenses to be issued using a Department-approved form.

2. Shellfish Resource Survey Requirement

Municipalities with an approved Shellfish Management Plan may be required to conduct resource surveys on a periodic basis of the commercially productive areas within the municipality classified as approved or conditionally approved, using Department-approved methods. The Department may require the municipality to conduct resource surveys prior to approving changes to their Municipal Shellfish Conservation Ordinance. The Department may also conduct resource surveys in lieu of or in conjunction with the

municipalities.

3. Enforcing any municipal shellfish conservation ordinance by the certified Shellfish Warden including but not limited to those involving licensing and closures to shellfish harvest; and
4. Submitting annually, on a Department approved form, by April 1st, an complete and accurate Annual Municipal Shellfish Management Plan Review a report to the Department including the following information: statement of management goals and implementation actions, members of the shellfish committee or staff, shellfish committee meeting schedule, conservation credit information, summary of conservation closures/opening, summary of transplant activities, details on survey data, shellfish management activities undertaken, e.g. spat fall enhancement, predator controls, etc. and related expenses, number of shellfish harvest licenses sold, revenue from license sales and fines, funds raised or appropriated for shellfish management, production records or summaries of municipal wardens' activities for municipally managed areas, and funds requested for the coming fiscal year.

7.35 Revocation of Municipal Shellfish Conservation Ordinance

If a municipality violates or fails to enforce any provision of Chapter 7 or of the approved Municipal Shellfish Conservation Ordinance, or fails to meet Shellfish Management Plan objectives, the Commissioner may revoke approval of the Municipal Shellfish conservation ordinance. Prior to such revocation, the Commissioner shall give written notice to the municipality of the violation or failure, by certified mail, and of the Department's intention to revoke its approval and the basis for the revocation. The municipality has 30 days to respond in writing as to how it may correct the violation or failure or may request a hearing on the matter in accordance with the following paragraph.

The Commissioner shall advise the municipality it has the right to request that an adjudicatory hearing be held before the Department in conformity with 5 M.R.S., Chapter 375 subchapter IV prior to a making a final decision whether to revoke approval. The hearing request must be in writing and must be received by the Department no later than 10 days after receipt by the municipality of the notice of the Commissioner's intent to revoke the approval of that municipality's shellfish conservation ordinance.

If the Commissioner revokes their approval, the Municipal Shellfish Conservation Ordinance shall, as of the date specified in the Commissioner's revocation notice, no longer be in effect and the area shall thereafter be governed by applicable state law and Department regulation.

7.40 Municipal Licensing of Shellfish Harvesters

1. The period of issuance for resident and nonresident licenses for municipalities with limited license allocations shall be the same in accordance with 12 M.R.S. §6671(3-A). The total number of non-resident licenses to be issued by a municipality shall be made available from the start of the period of issuance. Towns with unlimited license allocations shall make available, and issue if applicable on the first day of license sales, the number of total non-resident licenses issued the previous year. Thereafter, non-resident licenses will be issued according to the 10% rule in accordance with 12 M.R.S. §6671(3-E).
2. The number of limited shellfish licenses allocated among municipal residents and nonresidents shall be as established by the municipality and approved by the Commissioner prior to the period of issuance (Chapter 7.10(6)). Licenses unsold during the period of issuance shall be made available to residents and nonresidents alike on a first come, first served basis using an official, written waiting list that is posted publically or by lottery.

In accordance with 12 M.R.S. §6671(3-A) (E) and (F), the application of the minimum 10% ratio for allocation and issuance of nonresident commercial licenses is summarized in Table 1. Municipalities may issue more than the minimum number of non-resident licenses listed.

Table 1.

Number of Resident licenses:		Number of Non-resident licenses:
1-5	0	
6-10	1	
11-20	2	
21-30	3	etc.

3. Municipal shellfish license applicants who complete conservation time (or conservation credit activities) in order to be eligible for a municipal shellfish license according to the Municipal Shellfish Conservation Ordinance, shall remain eligible until they have been issued or offered a shellfish license by the municipality so long as the applicant applies annually for the license.

7.50 Municipal Shellfish Conservation Activities

1. Request for Municipal Shellfish Conservation Closure/Opening

A. Municipal Shellfish Conservation Closure/Opening applications will be reviewed by the Department and permits will be issued based on the applicant's ability to meet the criteria for any conservation action.

B. Municipalities must apply at least 20 business days prior to the requested date, in writing on Department approved forms to the Department for a conservation closure or opening.

C. Notification

The Municipality shall provide sufficient notification to the public of any conservation closure or opening by publishing, advertising and/ or posting in public places, an official municipal closure or opening notice signed by the Shellfish Warden or the Department issued permit, five (5) days prior to the initial closure or opening date. The method of notification must be approved by the Department prior to issuance of the permit.

2. Municipal Shellfish Transplant Permit Requirements

A. A municipality or regional program with a Municipal Shellfish Conservation Ordinance must have a permit from the Department to possess undersized shellfish. In the absence of a permit, the harvesters and the municipal or regional program are in violation of 12 M.R.S. §6681. Municipalities must apply at least 10 business days prior to the requested date in writing on Department approved forms to the Department for a Shellfish Transplant Permit.

B. Shellfish taken from Growing Areas classified as restricted, conditionally restricted in the open status or prohibited must be closed by the Department for specified amounts of time. Only seed may be transferred from Growing Areas classified as prohibited. If product larger than seed is proposed to be transplanted by a municipality for relay purposes from areas classified as restricted or conditionally restricted in the open status, the Department will issue a permit for such activities at the Commissioner's discretion based on an assessment of the overall performance of the Municipal Shellfish Conservation Ordinance and their ability to control restricted area relay activities and enforce closed areas.

1. The Municipality must have a Warden with a minimum of 100 hour MCJA training and certification.
2. The warden must be employed by the town for a minimum of 20 hours a week.

C. Seed purchased from out-of-state hatcheries require an Application for Importation, Introduction and/or Relay of Shellfish into Maine Coastal Waters pursuant to Chapter 24.10. Municipalities or regional programs must apply at least 30 days prior to the requested event, in writing, to the Department.

D. Municipalities must apply at least 30 days prior to the requested date, in writing, to the Department for a Shellfish Transplant Permit using a Department approved form.

E. Once a permit is issued, a municipality or regional program must adhere to the following requirements while transplanting shellfish from Growing Areas classified as restricted, conditionally restricted in the open status, or prohibited areas:

- (1) The transplanting must take place during daylight hours.
- (2) The transplanting may only take place on the day(s) designated in the permit unless the municipal or regional program secures written permission from the Department.
- (3) The transplanting may only take place under the supervision of the municipal shellfish warden, Department staff member or Department authorized relay supervisor (Chapter 21).
- (4) The transplant supervisor shall have a copy of the permit with them at all times during the activity. Absence of a permit shall be prima facie evidence of a violation of this regulation.
- (5) The supervisor must keep accurate records on a Department approved form (Activity Log) and a copy of the Activity log must be sent to the Department within 10 days of the activity. The permit holder must maintain a copy for two years and make it available to the Department upon request.
- (6) The harvest crew must remain in the permitted source area under immediate supervision of the municipal shellfish warden, Department staff member or Department authorized relay supervisor at all times.
- (7) Any harvesting violation shall nullify and void the permit. Any failure to comply with permit conditions shall be grounds for refusal of future permit applications until the Commissioner deems the municipality can meet the permit conditions.
- (8) Once a permit is issued, the permit holder must notify Marine Patrol the morning of the transplant. The information required for Marine Patrol includes, but is not limited to, the following:
 - (a) The name and contact information of the transplant supervisor.
 - (b) The source area and the transplant area
 - (c) The method and route of the transportation of seed to the transplant area.
 - (d) The departure point from the harvest area and the point of arrival for the transplant area.

7.70 Intertidal mussel harvesting by drag or dredge

1. Municipal responsibilities

A municipality with an approved municipal shellfish conservation program may, specify intertidal areas to be limited for mussel harvesting by drag, in accordance with 12 M.R.S. §6671. The municipality's specified intertidal areas and procedures for enforcement shall be submitted to the Commissioner for approval as part of its Municipal Shellfish Conservation Ordinance. Once these specified areas are approved, they will be posted on the Department's website. The municipality shall provide sufficient notification to the public of

any area limited for mussel harvesting by drag by publishing, advertising and/or posting in public places, an official municipal notice signed by the shellfish warden five (5) days prior to the initial implementation date. The method of notification must be approved by the Department prior to approval of areas limited for mussel harvesting by drag.

Upon receipt of a request for a recommendation regarding a permit, presented in accordance with Chapter 7.70(2), the municipality shall provide its recommendations to the applicant within 21 days.

2. Intertidal mussel harvesting permits

Prior to issuance of an Intertidal Mussel Harvest permit in an approved, municipally defined area(s), the applicant shall submit their request to, and consult with the municipality, and shall obtain the municipality's recommendation in writing. The permit application, (provided to the applicant by the Department) and municipal recommendation must be provided to the Department by the applicant for permit consideration, in accordance with 12 M.R.S. §6671(3)(A)(5).

The application shall include the harvester's name, address, business phone, email address, fax number, vessel name, mussel harvesting license number, locations selected, start and end dates of harvest activity, targeted quantity of seed mussels and or market size product, date of application, and a copy of the municipality's recommendations.

3. Compliance

Any failure to comply with permit conditions shall be grounds for refusal of future permit applications until the Commissioner deems the applicant can meet the permit conditions.

7.80 Municipal aquaculture activities report

In accordance with 12 M.R.S. §6673(3) the municipality shall submit an annual report, on forms provided by the Department, to the Commissioner on its permitted aquaculture sites.

Chapter 8: Landings Program

8.01 Definitions

- A. Except as modified, the definitions contained in 12 M.R.S.A. §6001 shall apply to this Chapter, in addition to the following;
 - 1. "Dealer License" means Wholesale, Retail, Marine Worm or Elver dealer license as defined in §6851, §6852, §6853 and §6864.

2. “Dealer” means any person who holds a Dealer License and buys, sells, barter or distributes for commercial purposes, other than solely for transportation, any marine organism.
3. “Harvester” means a licensed person who removes marine organisms (plants or animals) from the marine environment for personal or commercial use.
4. “Primary Buyer” means a Dealer who buys or obtains catch directly from any licensed harvester.
5. “Catch” means all species removed from the marine environment by a licensed harvester.
6. “Landing” means all harvested marine specie(s), in numbers or amounts, brought to shore and retained at the end of a trip.
7. “Contact Information”, unless otherwise noted, means the Department of Marine Resources (DMR), Landings Program, P.O. Box 8, West Boothbay Harbor, Maine 04575-0008; telephone: (207) 633-9500; fax: (207) 633-9579.
8. “Carred” or “Carred catch” means an aggregate of marine organisms that have been combined from more than one trip.
9. “Trip” means beginning and ending of a harvesting occurrence unique to one area and one gear.

8.02 Compliance

Dealers and harvesters must comply with reporting requirements in this Chapter. Data collected pursuant to this Chapter is subject to the confidentiality provisions of 12 M.R.S.A. §6173 and DMR regulations Chapter 5. Failure to comply with these reporting requirements may result in the denial for renewal of a license or permit in accordance with 12 M.R.S.A. §6173(2). Any misrepresentation of information in connection with the reporting requirements of this chapter shall be a violation of this rule. All data and reports shall be submitted to the Department of Marine Resource’s Landing Program unless specifically noted otherwise. See contact information in Chapter 8.01(7) above unless specifically noted otherwise. All data and reports shall be submitted to the Department by the 10th day of the following month; for example, reports for the month of January must be submitted by the dealer or harvester in time for the report to arrive at the Department by February 10th, unless otherwise noted. All data sent to DMR must be legible, coherent and in conformance with DMR specified standards.

8.05 Primary Buyers’ Permit

Persons that hold any dealer license and buy any marine organisms directly from harvesters must obtain a Primary Buyer permit. There will be no additional charge for this permit.

Applicable licenses include: Wholesale Seafood license holders including dealers that hold an additional permit for urchins or shrimp (12 M.R.S.A. §6851); Wholesale Seafood license holders with lobster permit (12 M.R.S.A. §6851(2-A)); retail seafood license holders (12 M.R.S.A. §6852); marine worm dealer license holders (12 M.R.S.A. §6853); elver dealer license holders (12 M.R.S.A. §6864); and Shellfish Sanitation and Certificate holders (12 M.R.S.A. §6856(1)).

8.10 Primary Buyer Permit Reporting

A. Primary Buyers shall report all transactions pertaining to buying any marine organism directly from harvesters on a trip level basis. The following data elements shall be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:

1. Dealer name (as it appears on the dealer license) & license number

2. Designate negative report period if no transactions purchased from harvesters
3. Date purchased/ & date landed
4. Harvester identification & vessel identification
5. Species
6. Amount
7. Grade & market category
8. Gear type (fishing method)
9. Disposition
10. Port landed
11. Indicate if catch was carried
12. Ex-vessel value (monthly average)
13. Signature written or electronic

B. All data sent to DMR shall be legible, coherent and conform to DMR specified standards.

8.20 Harvester Reporting

J. Shellfish Bait Permit

All shellfish bait permit holders are required to provide the Department the following information on forms supplied by the Department:

1. Daily record of sales;
2. Record of closed areas fished;
3. Ports landed; and
4. Daily record of clams harvested by shucked weight.

Chapter 9: Harvester: Shellstock Harvesting, Handling and Sanitation

9.01 Compliance

- A. Closed Area compliance: Harvest of shellstock is prohibited in areas that are closed due to marine biotoxins pursuant to Chapter 96 and bacterial pollution pursuant to Chapter 95, and in those areas that may be closed by the Department. For details about closure lines contact Marine Patrol Division I, west of Port Clyde, Tel. (207) 633-9595 or Marine Patrol Division II, east of Port Clyde, Tel. (207) 667-3373, or telephone the Shellfish Sanitation Hotline at 1-800-232-4733 or on the web at: <http://www.maine.gov/dmr/shellfish%20sanitation%20hot%20line.htm>.

- B. Commingling of shellstock is prohibited, except that primary dealers, as defined in Chapter 15.02(65), who are authorized by the Department in accordance with Chapter 16.21(C), may commingle shellstock.
- C. Harvesters may not conduct wet storage activities. Wet storage of shellstock is prohibited, except by certified dealers pursuant to a current permit issued by the Department in accordance with Chapter 15.
- D. Harvesters licensed pursuant to 12 M.R.S.A. §6601, §6731, §6732, §6745 and §6746 may sell shellstock the holder has taken only to wholesale seafood license holders certified in accordance with §6856. Exception: a harvester license holder may sell shellstock the holder has taken from that license holder's home in the retail trade pursuant to §6601 and to the holder of an enhanced retail seafood license pursuant to 12 M.R.S. §6852(2).
- E. In cases where a harvester is also a certified dealer, until the shellstock harvested by the licensee is sold to a wholesale seafood license holder certified under §6856, the licensee shall comply with all harvester laws and rules.
- F. Shellstock harvested by a licensed shellfish harvester shall be tagged, with the harvester tag pursuant to Chapter 9.06, at the harvest location (Chapter 9.06(A)) and until the first point of sale, to a certified dealer's permanent facility unless otherwise described below:
 - 1. Shellstock harvested by persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 or §6072-A, a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C and persons permitted pursuant to Chapter 24.05 who hold a valid shellfish harvester license shall be tagged with a harvester tag pursuant to Chapter 9.06.
 - 2. Shellstock harvested by persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 or §6072-A, a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C and persons permitted pursuant to Chapter 24.05 who hold a valid shellfish harvester license, and which are sold to a dealer certified pursuant to §6856, shall be tagged with a harvester tag pursuant to Chapter 9.06;
 - (a) Exception: for mussels, quahogs (includes mahogany quahogs), surf clams and oysters at the point of landing pursuant to Chapter 15.18 and 15.19; and
 - 3. Shellstock harvested by persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 or §6072-A, a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C and persons permitted pursuant to Chapter 24.05 who hold a valid shellfish harvester license and are certified pursuant to 12 M.R.S.A. §6856 shall be landed with a harvester tag attached pursuant to Chapter 9.06, and such tag shall remain in place until the shellstock is processed and ready for shipment, at which point the certified dealers tag shall be affixed in accordance with Chapter 15.18.
 - 4. Shellstock harvested by licensed mussel and mahogany quahog draggers shall be tagged with a harvester tag pursuant to Chapter 9.06 until the first point of sale at the certified dealer's permanent facility unless the dealer affixes the tag at the point of sale pursuant to Chapter 15.18 and 15.19.
 - 5. Shellstock harvested by licensed mahogany quahog and mussel draggers who are certified pursuant to 12 M.R.S.A. §6856 shall be landed with a harvester tag pursuant to Chapter 9.06 until product is processed, at which point the dealer tag shall be affixed pursuant to Chapter 15.18.

9.02 Shellstock Washing

- A. Shellstock must be washed such as to be reasonably free of bottom sediments as soon after harvest as practicable.

- B. Shellstock must be culled of dead, broken or gaping shellfish as soon after harvest as practicable and prior to presentation for direct market or delivery to a certified dealer.
- C. The harvester must wash the shellstock using one of the following methods:
 - 1. Wash the shellstock using water from a growing area classified as approved or conditionally approved in the open status at the time and place of harvest; or
 - 2. If shellstock washing is not feasible at the time of harvest, the certified dealer shall be responsible for washing using only water from an approved source.
- D. Shellstock may not be placed in containers of stagnant water.
- E. Depuration harvesters may use growing area water in the restricted or conditionally restricted classification in the open status to wash shellstock at the time and place of harvest.

9.03 Protection from Contamination

- A. Shellstock must be handled in a manner as to be protected from contamination. Examples of conditions creating a potential for contamination include, but are not limited to, shellstock transferred, held or transported with boat motors, engine oil, antifreeze, dead animals, dirty tarps, bilge water, polluted overboard water, closed area water, stagnant water, etc. Shellstock handled in a manner creating a potential for contamination shall be subject to immediate embargo and/or destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.
- B. Containers used for storing shellstock must be fabricated from safe materials, cleaned and maintained in a manner and frequency as necessary to protect shellstock from contamination.
- C. Shellstock held or washed in closed area water shall be subject to immediate embargo and/or destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.
- D. Once landed, shellstock held or washed in water containing any other macro marine organism(s), such as lobsters, finfish, invertebrates, etc., shall be subject to immediate embargo and/or destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.
- E. Shellstock placed in containers of stagnant water shall be subject to immediate embargo and/or destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.

9.04 Shellfish Harvester Vessels

- A. Vessels
 - 1. All harvester vessel operators must ensure that any vessel used to harvest, handle, transfer and/or transport shellstock is properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of the shellstock.
 - 2. Vessels and all other equipment coming into contact with shellstock during harvest, handling, transfer and/or transport of the shellstock must be constructed in a manner and with materials that can be cleaned and maintained, repaired and/or replaced.
 - 3. Decks or the floor of an open vessel upon which shellstock are placed, and any containers in which the shellstock are placed, shall be constructed and or located as to prevent bilge water or polluted overboard water from coming into contact with the shellstock.

4. Bilge pump discharges must be located so that the discharge does not contaminate shellstock.
5. Boat decks and containers used in the harvest, handling, transfer and/or transport of shellstock must be:
 - (a) Kept clean with water from a growing area in the approved classification or in the open status of the conditionally approved classification; and
 - (b) Provided with effective drainage.
6. When necessary, effective coverings shall be provided on harvest boats to protect shellstock from contamination including but not limited to exposure to sun, birds or other adverse conditions.
7. Cats, dogs and other animals must not be allowed on the vessel except for patrol dogs when accompanying security or police officers.

B. Disposal of Human Sewage from Vessels

1. Human sewage must not be discharged overboard from a vessel used in the harvesting of shellstock while the vessel is in the growing area.
2. An approved marine sanitation device (MSD), portable toilet or other sewage disposal receptacle must be provided on the vessel to contain human sewage.
3. Portable toilets must:
 - (a) Be required on all boats when the vessel is in use for over 6 hours to contain human sewage;
 - (b) Be used only for the purpose intended;
 - (c) Be secured while on board and located to prevent contamination of shellstock by spillage or leakage;
 - (d) Be emptied only into a sewage disposal system;
 - (e) Be cleaned before being returned to the boat; and
 - (f) Not be cleaned with equipment used for washing or processing food.
4. Use of other receptacles for sewage disposal may be approved by the Department if the receptacles are:
 - (a) Constructed of impervious, cleanable materials and have tight fitting lids;
 - (b) Meet the requirements in Chapter 9.04(B) (3); and
 - (c) Labeled clearly with "Sewage only" or equivalent language.

9.05 Vehicles Used to Transport Shellstock

- A. All conveyances used to transport shellstock to the original dealer must be properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of the shellstock.

Conveyances and all other equipment coming into contact with shellstock during transport must be constructed in a manner and with materials that can be cleaned and maintained, repaired and/or replaced.

B. Containers on conveyances used in the transport of shellstock must:

1. Be kept clean;
2. Provide effective drainage; and
3. When necessary, be covered to provide protection from contamination.

C. When transporting shellstock to the original dealer within the applicable time to temperature controls in Chapter VIII Section .02 A (1), (2) and (3) of the National Shellfish Sanitation Program Model Ordinance (referred to as "Model Ordinance") the temperature inside the conveyance shall not exceed the ambient air temperature when the ambient air temperature is above 50° Fahrenheit (10° Centigrade).

D. When mechanical refrigeration units are used, the units shall be:

1. Equipped with automatic controls; and
2. Maintained at an ambient air temperature necessary to comply with Chapter 9.05(C) above.

E. Any ice used to cool shellstock during transport shall be from an approved source.

F. Cats, dogs and other animals must not be allowed in any part of the conveyance where shellstock are stored except for patrol dogs when accompanying security or police officers.

9.06 Shellstock Tagging and Labeling

A. Each harvester licensed by the Department must, prior to landing, securely affix a tag to each container he/she has harvested. If the harvest has occurred at more than one harvest location each container must be tagged at the harvest location and must contain all information necessary to trace the shellfish back to the specific harvest area. Tags must be approved by the Department prior to use and be at least 2 5/8 inches x 5 1/4 inches (6.7 x 13.3 cm) in size and be waterproof and durable.

B. The harvester's tag must contain legible and indelible printed information arranged in the following order:

1. The title: "Harvester Tag" must be printed on the top of the harvester tag;
2. Harvester's name i.e., the first and last name of the person who harvested the shellstock;
3. Harvester's State Commercial Fishing license number;
4. Date of harvest;
5. Time of harvest, for the purpose of determining the time and temperature requirements in Chapter 9.08. For a harvester or vessel, the time would be when the first Shellstock harvested is no longer submerged.
6. The most precise identification of the harvest location, aquaculture lease site or LPA site as is practicable, including the initials of the state (Maine - ME), and the Department's designator of the

growing area by indexing, administrative or geographic designation. If the Department has not indexed growing areas, then an appropriate geographical or administrative designation must be used; e.g. flat or cove, river or bay, town, state. For example: White's Cove, Nonesuch River, Shellfishville, ME;

(a) Off shore vessels harvesting mahogany quahogs must provide identification as to the bay (if appropriate) and/or harvesting zones described by the Department.

7. Type and quantity of shellfish;

8. The following statement, which must appear in bold capitalized type and must be adhered to at all times: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS";

C. It shall be unlawful for any person or persons other than the certified dealer to be in possession of unused certified dealer tags.

D. The absence of tags as required by this regulation shall be prima facie evidence of a violation of these regulations and shall be grounds for the immediate embargo and/or destruction of the untagged shellstock as being of unsound or unknown quality, and therefore, unsafe for human consumption.

1. Exception: Bulk tags where approved for use by the Department in accordance with Chapter 15.18(D).

E. Shellfish tags that do not contain the required information, or are altered or mislabeled, shall be grounds for the immediate embargo and/or destruction of the shellstock as being of unsound or unknown quality, and therefore, unsafe for human consumption.

F. Example harvester tags are located at the end of this chapter. Note: both sides of a harvester tag may be used.

9.07 Shellfish Aquaculture

This section applies to persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 or §6072-A, a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C and to persons permitted pursuant to Chapter 24.05.

The following graph summarizes the licensing, certification, record keeping and tagging requirements applicable to persons engaged in shellfish aquaculture in territorial waters.

A. Aquaculture permitting and licensing requirements

Activities	Additional license required	Certification (Chapters 15 & 16)	Record Keeping	Tagging
Nursery	None	No ¹	Yes ²	None
Personal Use Recreational Use No sale/barter/trade	None	No	Yes ³	None
Product raised for human consumption No processing Sold to consumer from residence or to a Maine certified dealer	Harvester ⁴	No	Yes ⁵	Harvester ⁶
Product raised for human consumption Process, sell or ship to other than Maine certified dealers, or in Inter- and Intra State Commerce	Wholesale Seafood ⁷	Yes ⁸	Yes ⁹	Dealer ¹⁰

¹ National Shellfish Sanitation Program, Model Ordinance (as of 04-18-03 throughout) (referred to as "Model Ordinance") Chapter VI (A-C)

² Model Ordinance Chapter VI.02(J), DMR Chapter 9.07(D) and Chapter 2.90(E)

³ DMR Chapter 9.07(D) and Chapter 2.90(E)

⁴ 12 MRSA §6601(2), Model Ordinance Chapter VI.02(B)(2)

⁵ DMR Chapter 9.07(D)

⁶ DMR Chapter 9.06

⁷ 12 MRSA §6851 and §6856

⁸ 12 MRSA §6851, §6856 and Model Ordinance

⁹ DMR Chapter 15.24

¹⁰ DMR Chapter 15.18-20, Model Ordinance Chapter VI.02(B)(3)

1. In accordance with Model Ordinance Chapter VI.01 Shellfish Aquaculture, a land based aquaculture facility operator/owner is exempt from being a dealer when nursery shellstock are 6 months or more growing time from market size.
2. Any person who holds an aquaculture lease or LPA and any person who has been issued a permit pursuant to Chapter 24.05, who purchases, possesses, processes, sells, ships, shucks or transports shellfish in any form, other than to a certified dealer or in intra- and interstate commerce, and other than for nursery stock, personal or recreational use, or shellstock sold to consumers from a harvester's residence pursuant to 12 M.R.S.A. §6601, must hold a shellfish sanitation certificate 12 M.R.S.A. §6856.

B. Marine Biotoxins

For any marine biotoxin-producing organism for which criteria have not been established under the National Shellfish Sanitation Program Model Ordinance, either cell counts in the water column or biotoxin meat concentrations may be used by the Department as the criteria for not allowing the harvest of shellstock.

1. Paralytic Shellfish Poisoning (PSP); Diarrhetic Shellfish Poisoning (DSP); Domoic Acid (ASP) and Neurotoxic Shellfish Poisoning (NSP)

When local sampling by the Department indicates PSP, DSP, ASP or NSP toxin is present in the area, or phytoplankton which may cause PSP, DSP, ASP or NSP toxin are found in the area, then analysis for PSP, DSP, ASP or NSP will be required prior to DMR approval for the harvest or sale of shellstock from the lease or LPA site or by persons who are registered or permitted as indicated above. A minimum of twelve (12) shellfish must be submitted by the lease or LPA license holder, registrant or permit holder to the DMR Public Health Division Biotoxin Laboratory, by contacting the Boothbay Harbor facility at (207) 633-9555 or the Lamoine facility at (207) 667-2418, at least five (5) Business days prior to anticipated harvest.

Prior to approving the harvest or sale of shellfish from any lease or LPA site, or by a registrant or permit holder, which has submitted shellfish samples to DMR, the DMR may, in its sole discretion, send samples to an accredited analytical laboratory for analysis for PSP, DSP, ASP or NSP toxin.

2. Requirements and procedures

Sample results will be reported to the lease or LPA license holder, registrant or permit holder on a marine biotoxin analysis certificate issued by the DMR Public Health Division.

(a) Monitoring

The cost of monitoring for marine biotoxins, when required under the provisions of this section, shall be paid for by the lease or LPA license holder, registrant or permit holder. When monitoring is required, it must be done prior to the harvest of shellstock from the site for human consumption, or for any other commercial or non-commercial use.

C. Closed Areas

Harvest of shellstock is prohibited in areas that are closed due to bacterial pollution pursuant to Chapter 95. For details about closure lines contact Marine Patrol Division I, west of Port Clyde, Tel. (207) 633-9595 or Marine Patrol Division II, east of Port Clyde, Tel. (207) 667-3373, or telephone the Shellfish Sanitation Hotline at 1-800-232-4733 or on the web at: http://www.maine.gov/dmr/rm/public_health/closures/shellfishhotline.htm. (Chapter 9.01(A))

D. Record keeping

Complete, legible and accurate records of transport, transfer, harvest, and monitoring must be maintained by the lease or LPA license-holder, registrant or permit holder and must be made available for inspection for at least two (2) years. The records must include the:

1. Department's Lease ID, LPA license, registrant or permit holder number, site location, date and data related to marine biotoxin analyses;
2. Source of shellfish, including seed if the seed is from growing areas which are not in the approved classification status pursuant to Chapter 2.90 and/or Chapter 15;
3. Dates of transplanting and harvest;
4. Detailed records of sales;
5. Water source, its treatment method, if necessary, and its quality in land based systems pursuant to Chapter 15.32, 15.33, 15.34 and or 15.35; and

6. Records of the origin and health status of all seed or shellfish stocks reared on the lease or LPA site, or by the registrant or permit holder.

- E. Shellfish harvested from the site must be kept in containers that prevent commingling of different harvest lots.

9.08 Shellstock Time to Temperature Controls

Harvested shellstock shall be delivered within 16 hours from the time of harvest (Chapter 9.06(B)(5)) on the shellstock tag to temperature control, i.e. a certified dealer or direct market/consumer within the State of Maine. Time and temperature control requirements must be set in accordance with the NSSP Model Ordinance, Chapter VIII Control of Shellfish Harvesting and DMR Chapter 15.02(A)(91). Harvesters will be informed of any change to the 16-hour requirement by notice published in newspapers of general circulation and press release to the print media if the maximum number of hours before delivery for Maine must change.

- A. The time to temperature requirements for the harvesting of all shellstock to ensure that harvesters shall comply with Level 3 from the NSSP Model Ordinance which is an Average Monthly Maximum Air Temperature of >60 °F - 80 °F (15 °C - 27 °C) and a Maximum Hours from Exposure to Temperature Control of 18 hours.
- B. The water or air temperature to be applied to the requirement above for each growing area shall be established by averaging the previous five (5) years maximum monthly water or air temperatures.
- C. All harvesters shall provide trip records to the initial dealer demonstrating compliance with the time to temperature requirements. The harvest tag may be used to meet this requirement.

9.09 Non-compliance

If the Commissioner determines that an applicant for renewal of a shellfish license is not currently in compliance with shellfish sanitation regulations, failed to report, or has failed to comply with shellfish sanitation regulations during the previous license period, the Commissioner may, in addition to any remedy available, including but not limited to suspension or revocation of the license in accordance with the procedures established under the marine resources' laws, refuse renewal of the license in accordance with the following procedures:

- A. The Commissioner shall advise the applicant for renewal by certified mail, return receipt requested, of the refusal and the grounds for this refusal.
- B. The Commissioner shall advise the applicant for renewal that the applicant has a right to request that an adjudicatory hearing be held before the Department in conformity with 5 M.R.S.A., Chapter 375 subchapter IV. The Commissioner shall advise the applicant that the hearing must be requested in writing and that the written request must be received by the Department no later than 10 days of receipt by the applicant of the notice, by certified mail, of refusal to renew the shellfish certificate.
- C. If an adjudicatory hearing is requested, the Commissioner shall schedule a hearing within 10 days of the Department's receipt of the written request for hearing, unless a longer period is mutually agreed to in writing.
- E. Notice of the hearing date, time and location shall be given immediately to the applicant.

¹ Chapter 9.05(C) references the time between shellstock exposure, harvest and transport to the initial dealer. During the transportation of shellstock to the original dealer the temperature inside the conveyance cannot be any warmer than the outside temperature when

the outside temperature is above 50°F. This means if the outside temperature is 70°F the shellstock cannot be placed in the trunk of a car that is 90°F.

9.06(G) Example Harvester Tags: The superscripts refer to the required information subsection numbers in Chapter 9.06(B) and are not required on the tag. Note: both sides of a harvester tag may be used.

HARVESTER TAG¹	
NAME ² :	_____ DMR LICENSE# ³ :
HARVEST DATE ⁴ :	_____ TIME ⁵ :
HARVEST AREA ⁶ :	_____
SHELLFISH TYPE ⁷ :	_____ & QUANTITY ⁷ : _____
THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS⁸	

HARVESTER TAG¹
NAME ² : _____
DMR LICENSE# ³ :
HARVEST DATE ⁴ :
TIME ⁵ :
HARVEST AREA ⁶ :
SHELLFISH TYPE ⁷ :
& QUANTITY ⁷ :
THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS⁸

Chapter 10 Clams and Quahogs

10.01 Taking of quahogs in Maquoit Bay

It shall be unlawful to dredge or to take quahogs by any means, except the usual manner of hand digging with a so-called clam hoe, or by hand raking and hand tonging, or by picking quahogs out of the mud by hand, from the waters or flats of Maquoit Bay, Cumberland County, namely, all of the territory north and northeast of a line drawn from the most southerly end of Mere Point in the Town of Brunswick to the northeasterly end of Little Flying Point in the town of Freeport. This section shall not apply to equipment operated by the Department of Marine Resources.

10.02 T a k i n g of quahogs in Middle Bay

It shall be unlawful to dredge or to take quahogs by any means, except by the usual manner of hand digging with a so-called clam hoe or by hand raking and hand tonging, or by picking quahogs out of the mud by hand from the waters or flats of Middle Bay, Cumberland County, namely all of the territory north and northeasterly of a line drawn from a red marker, on the eastern shore of Mere Point and located at Blackstone Rock on the south shore of Win Smith Cove, so-called, then in an easterly direction to and including the northern shore of Birch Island and continuing in the same general direction to a red painted wood post placed on the northern point of Wilson Cove, so- called, located in the western shore of Harpswell Neck. This section shall not apply to equipment operated by the Department of Marine Resources.

10.03 M e t h o d of taking Surf, Hen Clams or Quahogs

It shall be unlawful to fish for or take any surf, hen clams or quahogs by any method of dredging or dragging with any combination of dredge or drag with any cutter bar that exceeds 36" in overall width except that in the area between the Spurwink River in Scarborough and Fletcher's Neck in Biddeford Pool, the cutter bar shall not exceed 24" in overall width.

10.04 Q u a h o g Size Restrictions

A. Definitions

1. Quahog

Quahog means *Mercenaria mercenaria*, commonly referred to as hard shelled clams.

2. Hinge width

Hinge width means the thickness of a quahog as measured between the convex apex of the right shell and the convex apex of the left shell.

B. Minimum Size

It shall be unlawful to take, possess, ship, transport, buy or sell quahogs that are less than one inch in thickness as measured across the hinge width.

1. Exemption

Quahogs of smaller size may be taken or possessed by persons holding an aquaculture lease issued under 12 M.R.S.A. §6072, §6072-A or §6072-B, as provided in §6073-A, or by persons holding a limited-purpose aquaculture (LPA) license issued pursuant to 12 M.R.S.A. §6072-C. Transportation, buying, selling and sanitation must all be in compliance with Chapters 9 and 15-20 and 21-24. This exception shall only apply to quahogs cultivated in the leased or licensed areas.

C. Compliance

Persons must comply with DMR regulations in Chapters 9 and 15 through 20 established in accordance with the National Shellfish Sanitation Program Model Ordinance (NSSP/MO) for the sanitary control of shellfish, which includes tagging requirements, and with DMR regulations in Chapters 21-24.

10.05 T a k i n g of quahogs in the sub-tidal waters of New Meadows Lake, Brunswick and West Bath

A. New Meadows Lake: The area bounded by the Old Bath Road and the Brunswick Road.

B. Methods of harvest prohibited

It shall be unlawful to fish for or take quahogs by towing any dredge, drag or other implement by watercraft; by diver/diving (SCUBA or snorkel*); or by pump, suction or any type of mechanical suction device. Hand digging with a so-called clam hoe or bull rake, hand-raking, hand tonging, or picking quahogs out of the mud by hand are allowed. Harvest by cutting through or breaking the ice is prohibited; harvest may take place only through open water.

*Any artificial breathing device that allows a person to breathe underwater.

This subsection does not apply to the holder of a lease issued under 12 M.R.S. §§6072, 6072-A or 6072-B when fishing for or taking quahogs cultivated on the leased area within the waters of New Meadows Lake.

C. Night prohibition

It shall be unlawful to fish for or take quahogs during the period ½ hour after sunset, as defined in 12 M.R.S. §6001(46), until ½ hour before sunrise, as defined in 12 M.R.S. §6001(45).

Chapter 12 Mussels

12.01 Nighttime Harvesting Prohibition

In accordance with [12 M.R.S.A. §6746-A](#) it shall be unlawful to fish for or take mussels (*Mytilus edulis*) by dragging between sunset ([12 M.R.S.A. §6001\(46\)](#)) and sunrise ([12 M.R.S.A. §6001\(45\)](#)) within Maine's territorial waters except the Commissioner may authorize the harvest of seed mussels during those times. All requests for this exception must be made to the Department in writing and permits which are granted will be in writing. Any fishing activity not expressly authorized in the permit granted by the Commissioner shall be a violation of this subsection and subject to prosecution and or seizure.

12.02 Drag Size Limit

It shall be unlawful to fish for or take mussels with any one combination of mussel drag(s) having an aggregate size in excess of 6 feet, 6 inches (6'6") in width (by measuring from the extreme outside edge on one side to the extreme outside edge on the opposite side) in Maine's territorial waters.

12.03 Seed Mussel

- A. Except by permit issued by the Commissioner of the Department of Marine Resources, (see second exception) it shall be unlawful to possess, ship, transport, buy, or sell mussels which by numerical count contain more than 106 mussels per two-quart container. Mussels by numeric count greater than the above shall be considered seed mussel.
- B. Exception 1.) This section establishes that seed mussels are those which in a 2-quart container would number no less than 106 by count. This method of measurement results in an average length of 2 inches or less. It is the intent of this regulation that seed mussels may not be landed and placed in the channels of trade, but may be harvested and transported by boat for purposes other than landing, such as for relaying to a lease site or other appropriate bottom. Subsection (A) shall not apply to mussels found in possession, shipped, or transported on the coastal waters of the State of Maine.

Exception 2.) The Commissioner may issue a permit allowing possession, shipment, transportation, buying, or selling mussels which by numerical count contain more than 106 mussels per 2-quart

container, for the purpose of relaying by truck, specifically for placement on a lease site or other appropriate bottom.

12.04 M u s s e l s Count and Tolerance

- A. The numerical count shall be determined by random sample from among the lot or bulk pile by randomly taking from various parts of the bulk pile or lot an amount equal to two quarts and then numerically counting same to determine the amount of mussels within the two-quart container.
- B. Tolerance of 10%. A ten percent tolerance shall be applied to the 106 mussel count when determining a violation of section 12.03.

12.05 U s e of Seed Mussels

Only mussels which meet the definition of seed mussels may be placed on aquaculture lease sites granted under 12 M.R.S.A. §6074.

12.06 S e e d Mussel Conservation Areas

- A. To conserve and provide for effective management of unique mussel areas, seed mussel conservation areas will be designated by the Department of Marine Resources. These areas will be selected based upon several considerations, to include either singly or in combination but not limited to: geographic extent, density, population size distribution, extent subject to winter mortality, and condition.
- B. Areas Defined. It shall be unlawful to take mussels (*Mytilus edulis*) by any method or manner from designated seed mussel conservation area(s) without a permit issued by the commissioner of the Department of Marine Resources. Descriptions of designated areas are as follows:

Jordan River, Trenton/Lamoine Description

Except by permit defined above, it shall be unlawful to harvest in any manner or possess mussels taken from the shores, flats, and waters of Jordan River in the towns of Trenton and Lamoine, Hancock County, inside and upstream of a line drawn from the mouth of Crippens Brook, on the western shore, due east to the eastern shore of Jordan River.

West Bay, Gouldsboro Description

Except by permit defined above, it shall be unlawful to harvest in any manner or possess mussels taken from the shores, flats, and waters of West Bay and Grand Marsh Bay in the town of Gouldsboro, Hancock County, northwesterly of a line drawn from the northernmost tip of Marsh Point, northeasterly to the southernmost tip of Jetteau Point.

Narraguagus Bay, Milbridge/Harrington Description

Except by permit defined above, it shall be unlawful to harvest in any manner or possess mussels taken from the shores, flats, and waters of that area of Narraguagus Bay, in the towns of Milbridge and Harrington, Washington County, northerly of a line running from the southwesternmost tip of Foster Island, northwesterly to Clam Ledge, and continuing to a point of land on the easternmost tip of Fickett Point, on the east side of Sinclair Cove, so-called; and southerly of a line running from the northernmost tip of Foster Island, northwesterly to the southwesternmost tip of Pinkham Island, continuing northwesterly to the easternmost point of Strout Point.

Harrington River, Milbridge/Harrington Description

Except by permit defined above, it shall be unlawful to harvest in any manner or possess mussels taken from the shores, flats, and waters of that area of Harrington River and Flat Bay, in the towns of Harrington and Milbridge, Washington County, lying southwesterly of a line running from the northwesternmost point of land bordering West Carrying Place Cove, northwesterly to the northernmost island of the Five Islands, and continuing westerly to the northernmost point of land bordering Five Islands Cove; and northeasterly of a line running from the southernmost point of land bordering West Carrying Place Cove, northwesterly to Chamberly Island, continuing northwest to the northernmost tip of Blasket Point, thence northeast to the southwesternmost tip Pineo Point.

- C. The Department may issue on a first-come-first-serve basis a no-cost permit to licensed mussel fishermen who shall authorize the permit holder to fish in designated seed mussel conservation areas, consistent with provisions of statute and regulation.

Chapter 14 Oysters

14.01 Definitions.

- A. "European oyster" means animals of the species *Ostrea edulis*.
- B. "American oyster" means animals of the species *Crassostrea virginica*.

14.10 European Oyster Harvesting Restrictions

A. Closed Season

It shall be unlawful to take, possess, ship, transport, buy or sell European oysters from June 15 to September 15 of any year.

1. Exceptions

Persons holding an aquaculture lease issued pursuant to 12 M.R.S.A. §6072, §6072-A or §6072-B, as provided in §6073-A, and persons holding a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C, may harvest European oysters from an aquaculture site from June 15 to September 15 of any year. Transportation, buying or selling must be done in accordance with Chapters 9 and 15-20 and 21-24.

A person shall not be in violation of Chapter 14.10(A) if they are in possession of a bill of lading for the amount of European oysters purchased from June 15 to September 15 of any year showing those oysters were lawfully obtained from an origin outside the State of Maine and possess any applicable license and permit in accordance with Chapter 24.

B. Minimum size

It shall be unlawful to take, possess, ship, transport, buy or sell European oysters whose shells are less than 3 inches in the longest diameter.

1. Exceptions

European oysters of smaller size may be taken or possessed by persons holding an aquaculture lease issued pursuant to 12 M.R.S.A. §6072, §6072-A, or §6072-B, as provided by §6073-A, or persons holding a limited-purpose aquaculture (LPA) license issued pursuant to 12 M.R.S.A. §6072-C. Transportation, buying or selling and sanitation requirements must be done in accordance with Chapters 9 and 15-20 and 21-24. This exception shall only apply to European oysters cultivated in the leased or licensed areas.

C. Compliance

Persons must comply with DMR regulations in Chapters 9 and 15 through 20 established in accordance with the National Shellfish Sanitation Program Model Ordinance (NSSP/MO) for the sanitary control of shellfish, which includes tagging requirements, and with DMR regulations in Chapters 21-24.

14.40 Criteria for Issuing a Cultchless American Oyster License.

- A. The Commissioner of the Department of Marine Resources may issue a license to grow and possess cultchless American oysters to the following:
 - 1. Any person, firm, or corporation holding a valid aquaculture lease from the Department of Marine Resources for the purpose of growing cultchless American oysters; or
 - 2. Any person, firm, or corporation who provides a bill of sale for seed American oysters, and other evidence satisfactory to the Commissioner proving an intent to grow cultchless American oysters in coastal waters.
- B. Any person, firm or corporation who is issued a license under this section shall be subject to all other marine resources laws and regulations that apply to the license holder activities.

Chapter 15: General Shellfish Sanitation Requirements

15.01 Compliance

Each dealer shall comply with the requirements specified in Chapters 15 through 20 as appropriate to the plant and the shellfish being processed.

15.02 Definitions

- A. In addition to the definitions set forth in 1 M.R.S. §§71 and 72 and 12 M.R.S. §6001, the following definitions shall apply in interpretation of chapters 9, 10, 14 and 15-21.
 - 1. “Adequate” means that which is needed and/or appropriate to accomplish the intended purpose and/or use in keeping with good public health practice.
 - 2. “Air gap” means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood level rim of the receptacle.
 - 3. “Alteration” means the act or process of altering; the condition of being permanently altered; to make different, to modify the footprint of the structure.
 - 4. “Approved” means a classification used to identify a growing area where harvest for direct marketing is allowed by the Department.

5. “Aquaculture” for the purposes of Chapters 9 and 15 through 20 means the cultivation of shellfish seed in natural or artificial growing areas, or the cultivation of shellstock other than seed in growing areas.
6. “Backflow” means the flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply from any source or sources other than the intended source.
7. “Back siphonage” means the flowing back of used, contaminated or polluted water from a plumbing fixture, vessel or other source into potable water supply pipes because of negative pressure in the water supply pipes.
8. “Blower” means a receptacle for washing shucked shellfish, which uses forced air as a means of agitation.
9. “Bulk tagging” means a specified written agreement between a harvester(s), a certified Maine Shellfish Dealer and the Department; or between two certified dealers and the Department under which mussels, quahogs, surf clams or oysters that are harvested from one harvest area on a single day by one licensed harvester may be landed or transported between dealers bearing one tag per lot (if loose) or per pallet (if bagged, stacked and shrink wrapped).
10. “Certification or certify” means the issuance of a numbered certificate to a facility or vehicle for a particular activity or group of activities that indicates:
- (a) Permission from the Department to conduct the activity; and
 - (b) Compliance with the requirements of state laws and regulations.
11. “Certificate holder” means any wholesale seafood (12 M.R.S. §6851) or shellfish transportation (12 M.R.S. §6855) licensee to whom the Department has issued a certificate, as required by 12 M.R.S. §6856, authorizing that licensee to buy, sell, ship, transport or process shellfish. Classes of certificate holders include:
- (a) Shucker-Packer (SP). The holder of a shucker-packer certificate may purchase, sell, pack, ship, shuck or transport shellfish, whether in shellstock or shucked form. A shucker-packer may repack shucked shellfish obtained from other certificate holders. A shucker-packer shall have a facility for proper storage and/or repacking of shellstock and shucked shellfish, including a means of refrigerated storage of shellfish, i.e. a walk – in cooler.
 - (b) Shellstock Shipper (SS). The holder of a shellstock shipper certificate may purchase, sell, pack, ship and transport shellstock. A shellstock shipper certificate holder may purchase and sell shucked shellfish obtained from a shucker- packer certificate holder, but must not shuck shellfish or repack shucked shellfish. A shellstock shipper shall have a facility for proper storage and packing or repacking of shellstock, including a means of refrigerated storage of shellfish, i.e. a walk-in cooler.
 - (c) Reshipper (RS). The holder of a reshipper certificate may ship or transport shucked shellfish in original containers, and shellstock purchased from certified shellfish dealers to other certificate holders, retailers or to final consumers. A reshipper shall not shuck, repack, hold or store shellfish for sale, shipment or transport. A reshipper may not harvest shellfish or buy from harvesters.

(d) Depuration Processor (DP). The holder of a depuration certificate may purchase, receive or harvest shellstock from areas classified as approved, conditionally approved, restricted or conditionally restricted and submits such shellstock to an approved depuration process. The depuration processor may pack, sell, ship or transport the depurated shellstock. A depuration processor shall have a facility, including a means of refrigerated storage of shellfish, i.e. a walk-in cooler.

(e) A shucker-packer (a), shellstock shipper (b), or depuration processor (d) may harvest shellfish provided that individual holds a shellfish license as provided by 12 M.R.S. §6601.

(f) If a shellfish certificate holder does not conduct any shellfish business activity for more than 365 days, the business shall be considered inactive. See definition 15.02(46) "inactive status".

12. "Certificate number" means the unique identification number issued by the Department to each dealer for each location. Each certification number shall consist of a one to five digit Arabic number preceded by the two letter state abbreviation and followed by a two letter abbreviation for the type of activity or activities the dealer is qualified to perform in accordance with the laws and regulations of the State of Maine using the following terms:

- (a) Shucker - packer (SP);
- (b) Shellstock shipper (SS);
- (c) Reshipper (RS); and
- (d) Depuration processor (DP).

13. "Coliform group" means the entire aerobic and facultative anaerobic, gram-negative, nonspore forming, rod shaped bacilli, which ferment lactose broth with gas formation within 48 hours at 35 degrees centigrade.

14. "Commingle or commingling" means the act of combining different lots of shellstock or shucked shellfish.

15. "Compliance schedule" means a written schedule that provides a correction time period to eliminate "Key" or "Other deficiencies".

16. "Conditionally approved" means a classification used to identify a growing area, which meets the criteria for the approved classification except under certain conditions described in a management plan.

17. "Conditionally restricted" means a classification used to identify a growing area, which meets the criteria for the restricted classification except under certain conditions described in a management plan.

18. "Container" means any bag, sack, tote, conveyance or other receptacle used for containing shellfish for holding or transport.

19. "Corrosion resistant materials" means materials that maintain their original surface characteristics under normal exposure to the foods being contacted, normal use of cleaning compounds and bactericidal solutions, and other conditions of use.

20. "Critical control point" (CCP) means a point, step or procedure in a food process at which control can

be applied, and a food safety hazard can as a result be prevented, eliminated or reduced to acceptable levels.

21. "Critical deficiency" means a condition or practices which: (a) results in the production of a product, which is unwholesome; or (b) presents a threat to the health or safety of consumers.
22. "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate or reduce to an acceptable level the occurrence of the identified food safety hazard.
23. "Cross connection" means an unprotected actual or potential connection between a potable water system and any source or system containing unapproved water or a substance that is not or cannot be approved as safe and potable. Examples are bypass arrangements, jumper connection; removable sections, swivel or change over devices, or other devices through which backflow could occur.
24. "Cull" means to remove dead, broken or unsafe shellstock and foreign material from a lot of shellstock.
25. "Dealer" means a person to whom certification is issued for the activities of shellstock shipper, shucker - packer, reshipper, or depuration processor.
26. Depuration or depurate means the process of reducing the pathogenic organisms that may be present in shellstock by using a controlled aquatic environment as the treatment process.
27. "Direct marketing" means the sale for human consumption of shellfish which:
 - (a) Does not require depuration or relaying prior to sale; or
 - (b) Has been subjected to depuration or relaying activities.
28. "Dry storage" means the storage of shellstock out of water.
29. "Easily cleanable" means a surface, which is:
 - (a) Readily accessible; and
 - (b) Is made of such materials that is so fabricated that it has a smooth finish and residues may be effectively removed by normal cleaning methods.
30. "Fecal coliform" means that portion of the coliform group which will produce gas from lactose in an EC or A-1 multiple tube procedure liquid medium within 24(+2) hours in a water bath maintained at 112 °Fahrenheit (44.5 °+ 0.2 ° Centigrade).
31. "FDA" means the United States Food and Drug Administration.
32. "Food contact surface" means an equipment surface or utensil, which normally comes into direct or indirect contact with shucked shellfish, process water or ice.

33. "Food contact zone" means parts of food equipment, including auxiliary equipment (such as blower pipes and drain valves), which may contact food being processed, or that drain into a portion of equipment that may contact food being processed.
34. "Food safety hazard" means any biological, chemical or physical property that may cause a food to be unsafe for human consumption.
35. "Geometric mean" means the antilog (base 10) of the arithmetic mean of the sample result logarithm (base 10).
36. "Growing area" means any site, which supports or could support the propagation of shellstock by natural or artificial means.
37. "HACCP" is an acronym that stands for Hazard Analysis Critical Control Point, a systematic, science - based approach used in food production as a means to assure food safety. The concept is built upon the seven principles identified by the National Advisory Committee on Microbiological Criteria for Foods (1992).
38. "HACCP Plan" means a written document that delineates the formal procedures that a dealer follows to implement the HACCP requirements set forth in 21 Code of Federal Regulations (CFR) 123.6 as adopted by the Interstate Shellfish Sanitation Conference (ISSC).
39. "Harvest" means the act of removing shellstock from growing areas and its placement on or in a manmade conveyance or other means of transport or transfer.
40. "Harvest area" means an area that contains harvestable quantities of shellstock and may include aquaculture sites and facilities.
41. "Harvester" means a person who holds a current valid license that obtains shellstock by any means from a growing area.
42. "Heat shock" means the process of subjecting shellstock to any form of heat treatment prior to shucking, including steam, hot water or dry heat, to facilitate removal of the meat from the shell without substantially altering the physical or organoleptic characteristics of the shellfish.
43. "Holding" means the refrigerating, storing, accumulating or processing of shellfish either shucked or in the shell, for sale, offer or transport.
44. "Importer" means any dealer who introduces molluscan shellfish into domestic commerce. An importer has ownership of the shellfish, but need not take physical custody of the shellfish.
45. "Includes" or "including" means includes or including by way of illustration and not by way of limitation.
46. "Inactive Status" means a certified shellfish dealer who has not conducted any shellfish business activity for 365 days or more.

47. “Indelible” means that which cannot be erased, blotted out, eliminated, or that which is permanent or lasting.
48. “Inspection item” means one of the standard criteria listed in the National Shellfish Sanitation Program (NSSP) Plant Inspection Form under which single or multiple observations of specific critical, key or other deficiencies can be debited.
49. “Interstate Certified Shellfish Shippers List” (ICSSL) means an FDA publication of shellfish dealers, domestic or foreign, who have been certified by a state or foreign Authority as meeting the public health control measures specified in the National Shellfish Sanitation Program (NSSP).
50. “Interstate Shellfish Sanitation Conference” (ISSC) means the organization which consists of agencies from shellfish producing and receiving States, FDA, the shellfish industry, the National Marine Fisheries Service of the U.S. Department of Commerce, and the U.S. Environmental Protection Agency. The ISSC provides the formal structure wherein State regulatory authorities, with FDA concurrence, can establish updated guidelines and procedures for sanitary control of the shellfish industry.
51. “Internal temperature” means the actual temperature of shellfish whether shucked or in shellstock form, as opposed to the air temperature of the container in which the shellfish is stored.
52. “Key deficiency” means a condition or practice, which may result in adulterated, decomposed, misbranded or unwholesome product.
53. “Label” means any written, printed or graphic matter affixed to or appearing upon any package containing shellfish.
54. “Legible” means that which can be read or deciphered easily.
55. “Lots”:
- (a) “Shellstock”: means a single type of bulk shellstock or containers of shellstock of no more than one day's harvest from a single defined growing area harvested by one or more harvesters.
 - (b) “Shellstock for Depuration”: means shellstock harvested from a particular area at a particular time and delivered to one depuration plant. Also the same shellstock following completion of the depuration cycle.
 - (c) “Shucked Shellfish”: means a lot/set of containers of no more than one day's shucked shellfish product produced under conditions as nearly uniform as possible, and designated by a common container code or marking.
56. “Marine biotoxin” means any poisonous compound produced by marine microorganisms and accumulated by shellstock. Examples include but are not limited to the genus *Alexandrium*.
57. “Monoculture” means the culture of a single bivalve species.
58. “MPN” (Most Probable Number) means a statistical estimate of the number of bacteria per unit

volume and is determined from the number of positive results in a series of fermentation tubes.

59. "National Shellfish Sanitation Program" (NSSP) means the cooperative State-FDA-Industry program for the sanitary control of shellfish that is adequate to insure that the shellfish produced in accordance with the most recent edition of the Model Ordinance (MO) (available at www.ISSC.org), will be safe and sanitary.

60. "Operational Plan" means a written description of the design and activities of the facility specific to, but not limited to, the species of shellfish to be processed, the source of the shellfish to be processed, how the shellfish will be processed, and how the required records will be maintained.

61. "Other Deficiency" means a condition or practice that is not defined as critical or key and is not in accordance with NSSP Guide for Control of Molluscan Shellfish requirements or state regulations or laws.

62. "Poisonous or deleterious substance" means a toxic substance occurring naturally or added to the environment for which a regulatory tolerance limit or action level has been established in shellfish to protect public health.

63. "Polyculture" means the cultivation of:

- (a) Two or more species of shellfish; or
- (b) Shellfish with other species in a common environment.

64. "Potable Water" means a water supply, which meets the requirements of the Safe Drinking Water Act, as administered by the EPA and which meets the requirements of Chapters 15 - 20.

65. "Primary Dealer" means certified dealers who receive, purchase and/or pack shellfish directly from harvesters.

66. "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown or examined under customary conditions or retail sale.

67. Process, the verb. The verb "process" means handling, storing, cooking, preparing, producing, manufacturing, preserving, packing or other activity which could change the condition or form. (12 M.R.S. §6001(35)).

68. "Process batch" means a quantity of shellstock used to fill each separate tank or a series of tanks supplied by a single process water system for a specified wet storage or depuration cycle in a depuration or wet storage activity.

69. "Process water" means the water used in a wet storage, hot dip/heat shock or depuration process.

70. "Prohibited" means a classification used to identify a growing area where the harvest of shellstock for any purpose, except depletion or gathering of seed for aquaculture, is not permitted.

71. "Recall" means an appropriate method for removing or correcting marketed consumer products,

including their labeling and/or promotional literature that violate the laws administered by the Food and Drug Administration (FDA) or the Department. They are generally more efficient and afford equal and more timely consumer protection than formal administrative or civil actions, especially when the product has been widely distributed. Recalls may be undertaken at any time on the initiative of manufacturers and distributors to carry out their responsibility to protect the public health and well-being, or in response to a formal request by the Department or the US FDA.

72. “Relay means” to transfer shellstock from a growing area classified as restricted or conditionally restricted to a growing area classified as approved or conditionally approved for the purpose of reducing pathogens as measured by the coliform indicator group or poisonous or deleterious substances that may be present in the shellstock by using the ambient environment as the treatment process.

73. “Renovate” means to restore to a previous condition, as by remodeling.

74. “Repacking shellstock” means the practice of removing shellstock from containers and placing them into other containers.

75. “Restricted” means a classification used to identify a growing area where harvesting shall be by special license and the shellstock, following harvest, is subjected to a suitable and effective treatment process through relaying or depuration.

76. “Safe materials” means articles manufactured from or composed of materials that may not reasonably be expected to, directly or indirectly, become a component of or otherwise adversely affect the characteristics of any food.

77. “Sanitation control record” means records that document the monitoring of sanitation practices and conditions during processing.

78. “Sanitize” means to adequately treat food contact surfaces by a process that is effective in:

- (a) Destroying vegetative cells of microorganisms of public health significance;
- (b) Substantially reducing the numbers of other undesirable microorganisms; and
- (c) Not adversely affecting the product or its safety for the consumer.

79. “Seed” means shellstock, which is less than market size.

80. “Shall” means mandatory and required.

81. “Shellfish” means all species of:

- (a) Clams, mussels, quahogs and oysters, whether:
 - (1) Shucked or in the shell;
 - (2) Fresh or frozen; and

- (3) Whole or in part.
- (b) Scallops in any form, except when the final product form is the adductor muscle only.
82. “Shellstock” means live molluscan shellfish in the shell; and shellfish which have not been removed from their shells (12 M.R.S. §6001(42)).
83. “Shellstock packing” means the process of placing shellstock into containers for introduction into commerce.
84. “Shucked Shellfish” means shellfish meats, whether whole or in part, which have been removed from the shell.
85. “Single Service Containers” means containers that are to be used only once and may not be reused. This applies to containers for shucked product, wooden shellstock crates, plastic bags and mesh bags.
86. “SPC” is “Standard Plate Count” or “Heterotrophic Plate Count” method that is used for the enumeration of total aerobic and facultative anaerobic bacteria in shellfish meat samples. The method provides a means of monitoring shellfish meats for contamination prior to and during processing. This direct quantitative technique is performed by plating shellfish bray in a pour plate assay utilizing Heterotrophic Plate Count Agar as medium. Colonies are counted on 10 plates per sample and reported as colony forming units (CFU) per 100 grams of meat. A count greater than 500,000 CFU/100 gm is unsatisfactory.
87. “Standardization” means a process in which applicable staff from the FDA and the Department conducts evaluations using standard criteria in a uniform manner.
88. “State shellfish standardized inspector” means a person that has successfully completed the field evaluation phase of shellfish plant inspection with a state standardization officer. The state shellfish standardized inspector shall successfully complete the FDA standardization training course or one deemed acceptable by the FDA.
89. “State shellfish standardization officer” means a person that has successfully completed the FDA standardization training course and the field evaluation phase of shellfish plant inspection with an FDA standardization officer.
90. “Swing deficiency” means a deficiency noted on the NSSP Standardized Shellfish Processing Plant Inspection Form, which, depending upon the severity and circumstances can be either a “Critical” or a “Key” deficiency.
91. “Time and Temperature Matrix or Matrices” means a table or tables delineating time-temperature controls for harvested shellfish in accordance with MO Chapter VIII, “Control of Shellfish Harvesting.”
92. “Time” for the purpose of time to temperature control begins once the first shellstock harvested is no longer submerged.
93. “Transaction record” means the form or forms used to document each purchase and/or sale of shellfish

at the wholesale level, and includes shellfish harvest and sales records, ledgers, purchase records, invoices and bills of lading.

94. "Transfer" means to transport by boat on the water (12 M.R.S. §6001(49)).

95. "Wet storage" means the temporary storage of shellstock from growing areas in the approved classification or in the open status of the conditionally approved classification in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

96. "Conveyance" means any type of container used to transport shellfish. The controls of the National Shellfish Sanitation Program (NSSP) are intended to address the container in which the shellfish are being held during transport from landing to final consumer. For the purposes of meeting the NSSP time temperature requirements for conveyances, the containers in which the shellfish are being held must meet the required temperatures. Should shellfish be shipped in a small container within a cargo space the temperature requirement would apply only to the temperature within the container.

15.03 Regulated Activity

A. Any person who receives, buys, purchases, possesses, processes, sells, ships, shucks, or transports shellfish in any form for other than personal use within or across State of Maine boundaries must hold a certificate from the Department, as required by 12 M.R.S. §6856 or 12 M.R.S. §6852.

1. Exception – Common Carrier. A common carrier licensed by the Federal Highway Administration, as defined in §6001(8) may possess, ship or transport shellfish without a Department shellfish sanitation certificate.

2. Exception – Commercial Shellfish Harvester. A commercial shellfish harvester licensed pursuant to §6601 may possess or transport shellstock within the state limits or sell shellstock he or she has taken from open areas to a wholesale seafood license holder certified under 12 M.R.S. §6856 or an Enhanced Retail Certificate holder under 12 M.R.S. §6852. A licensed harvester may also sell shellstock in the retail trade from his or her home or aquaculture site which the license holder has taken from his home in accordance with 12 M.R.S. §6601.

3. Exception – Land Based Aquaculture. In accordance with MO Chapter VI.01 Shellfish Aquaculture, a land based aquaculture facility operator/owner is exempt from being a dealer when nursery shellstock are 6 months or more growing time from market size.

B. It shall be unlawful for the holder of a shellfish certificate to receive, buy, purchase, hold, wash, pack, tag or label shellstock in any location other than the permanent facility for which the holder's certificate has been issued.

1. Exception. Certified dealers, in accordance with 12 M.R.S. §6856, may purchase mussels and mahogany quahogs at locations other than the permanent facility for which the holder's certification was issued (Chapter 15.18(D) and 15.19). Vehicles used to transport mussels and mahogany quahogs purchased at such locations must be in compliance with the requirements of Chapter 16.23.

2. Exception. Certified dealers may purchase soft shelled clam shellstock from licensed harvesters

at locations other than the permanent facility for which the holder's certification was issued with a buying station permit pursuant to Chapter 15.37.

15.04 Origin of Shellfish

It shall be unlawful to buy, purchase and/or possess shellfish obtained from any source other than shellstock harvested by a licensed harvester from an area classified by the Department as approved or conditionally approved in the open status; and or a dealer holding a shellfish certificate.

Exception: The holder of a depuration certificate or a relay permit from the Department may buy, ship, transfer or transport shellfish from an area classified as restricted or conditionally restricted in accordance with permit conditions.

15.05 Certification Requirements

A. No person shall act as a wholesale seafood dealer prior to obtaining certification pursuant to 12 MRSA §6856.

B. Any person who wants to obtain certification shall, on an annual basis:

1. Apply to the Department on forms supplied by the Commissioner and shall provide all information required, including, but not limited to the following:

(a) Name, address, home and business phone of the applicant as well as a list of all Department of Marine Resources licenses currently held by the applicant.

(b) Exact location of the proposed facility where applicant proposes to process shellfish.

(c) Detailed description of the proposed shellfish processing operation which an applicant proposes to undertake.

(d) Names of all those persons who will act as agent for the applicant, as well as the name of the manager or officer of the proposed shellfish processing facility.

(e) A complete disclosure of any history of marine resource violations, whether federal or state, of the owner, agents, managers, or officers;

2. Submit and implement an HACCP plan that is signed and dated, and have a program of sanitation monitoring and record keeping in compliance with 21 CFR 123 as it appears in the Federal Register of December 18, 1995 and in accordance with Chapter 15.26 and 15.31; and

C. An operational plan shall be submitted to the Department with any initial application for certification, a bulk tagging permit, a wet storage permit, a buying station permit and whenever there is a change in the operations of a shellfish business.

D. Each dealer shall have a business facility address at which inspections of facilities, activities, equipment, and records can be conducted.

- E. Any person requesting certification shall be subject to a comprehensive onsite inspection. A state shellfish standardized inspector shall conduct the inspection, using the appropriate inspection form.
- F. Certifications expire on the first day of June, unless an earlier expiration date is given.
- G. Only one certification number may be issued to a dealer for a location. A person or dealer may obtain more than one certification if each business is:
1. Maintained as a separate entity; and
 2. Is not found at the same location.
- H. Facilities may be shared by separate certified dealers with prior written Department approval.
- I. The holder of a shellfish certificate shall be strictly responsible for all activities undertaken pursuant to that shellfish certificate whether or not those activities are undertaken personally by the certificate holder or by an employee, agent, manager or officer employed by the certificate holder.
- J. Upon initial application for certification and any time thereafter that changes are made to the dealer's plumbing system, the applicant shall submit local code enforcement or plumbing inspector's inspection permit to the Department to demonstrate that all plumbing and sewage within the facility meets state and local code requirements.

15.06 Initial Certification Criteria

- A. The physical plant, equipment and the operations of the applicant must be in compliance with all Department regulations. The Commissioner may issue a conditional shellfish certificate to the applicant containing performance requirements for the applicant's shellfish operations.
- B. Certification shall only be given to those applicants who meet the following standards for certification:
1. HACCP requirements:
 - a. A HACCP plan accepted by the Department;
 - b. No critical deficiencies;
 - c. Not more than 2 key deficiencies;
 - d. Not more than 2 other deficiencies.
 2. Sanitation and additional Model Ordinance Requirements:
 - a. No critical deficiencies.
 - b. Not more than 2 key deficiencies;
 - c. Not more than 3 other deficiencies.
 - .
- C. The deficiencies must be corrected according to a compliance schedule approved, in writing, by the Department.

15.07 Renewal of Certification

- A. The dealer shall apply for certification renewal annually at the time specified by the Department.
- B. The Department shall not certify any dealer until the dealer has:
 - 1. Corrected any deficiencies identified in a compliance schedule if applicable.
 - 2. Addressed any new key or other deficiencies in a new or revised compliance schedule; and
- (a) Met the requirements of Chapter 15.06.

15.08 Denial of Certification

- A. Where the Commissioner determines that an applicant's proposed shellfish operations do not comply with Department regulations he/she may deny the shellfish certificate application in writing, stating the reasons for the denial and notifying the applicant of his/her right to request an adjudicatory hearing on the denial before the Commissioner.
- B. Any applicant denied a shellfish certificate by the Commissioner may request an adjudicatory hearing before the Commissioner. The request must be in writing and must be received by the Department no later than 10 days of receipt by the applicant of the notice, by certified mail, of denial of the shellfish certificate. The Commissioner shall follow the adjudicatory hearing procedures set forth in 5 M.R.S. §9051 et seq. and shall give notice of the hearing as required by 5 M.R.S. §9052(1) (A). No public notice shall be required.
- C. Any applicant denied a shellfish certificate by the Commissioner may submit amended applications after they have corrected deficiencies cited by the Commissioner.
- D. Any applicant may request, in writing, additional Department inspections after correcting deficiencies cited in the Department inspection report.

15.09 Inspections

- A. Except as provided by chapter 15.10, all certified facilities must be inspected on a random basis according to the following minimum frequencies:
 - 1. All newly certified dealers will be reinspected within 30 working days.
 - 2. All shucker packers (SP) will be inspected at least once every three months.
 - 3. All shellstock shippers (SS) will be inspected at least once every six months.
 - 4. All reshippers (RS) will be inspected at least once every six months.
 - 5. All depuration plants (DP) will be inspected at least once every month.

6. All wet storage permit holders activities will be inspected at least annually for offshore storage in natural bodies of water and semiannually for all land based systems.

15.11 Performance Bond

Any shellfish certificate applicant adjudicated for violating any shellfish law or regulation in a civil proceeding, or convicted in a criminal proceeding for violating any shellfish law or regulation, may be required by the Commissioner to post a surety company's performance bond in the sum of Five Thousand Dollars (\$5,000.00), payable to the Treasurer State of Maine and conditioned so as to ensure faithful fulfillment of all duties and obligations imposed by law and regulation upon shellfish certificate holders. The bond must be delivered to the Commissioner prior to the reinstatement, renewal or granting of a shellfish certificate. Any subsequent judgment in a civil proceeding or conviction in a criminal proceeding shall be reported immediately to the bonding company by the Commissioner who may obtain forfeiture of the bond upon presentation of a court-certified copy of the record of the judgment or conviction.

15.12 Alterations and Renovations

A. At least 30 days prior to altering or renovating any physical plant, handling procedure or equipment, the Department must be contacted. Written permission must be obtained from the Commissioner prior to changes.

1. All water supply and wastewater disposal systems must comply with the requirements of the Department of Human Services and the Department of Environmental Protection with regard to drinking water and wastewater disposal, and the construction must comply with all local fire, plumbing and electrical codes.

B. If the Commissioner denies permission, he/she shall issue his/her denial in writing, with specific reasons for his/her denial.

15.13 Surrender of Certificate and Reactivation of Certificate

A. The holder of a shellfish certificate must surrender its certificate to the Commissioner if the holder's business becomes inactive. In the event that the holder wishes to reactivate the business during the original certification period, the holder may apply in writing to the Commissioner for reissuance of the certificate. The certificate shall be reinstated, in writing, by the Commissioner for the original issuance period, if the physical plant, equipment and operating procedures of the shellfish business comply with shellfish sanitation laws and regulations.

B. Any shellfish certificate holder who relocates its shellfish processing establishment or changes vehicles used to transport shellfish shall notify the Commissioner in writing of the relocation or change and surrender the certificate issued for the former establishment or vehicle. The certificate holder shall file a new application for certification on the new establishment or vehicle.

15.14 Suspension, Revocation or Refusal to Reissue a Shellfish Certificate

A. Suspension or Revocation

1. The Commissioner may suspend a shellfish certificate under 12 M.R.S. §6371 where the holder has refused to allow a shellfish inspection or has violated a shellfish sanitation regulation. The Commissioner shall follow the procedures set forth in 12 M.R.S. §6372 and §6374 to impose such a suspension.

2. The Commissioner may suspend a shellfish certificate under 12 M.R.S. §6401 where the holder has been convicted of a violation of a marine resources law. The Commissioner shall follow the procedures set forth in 12 M.R.S. §§6351 to 6353 to impose such a suspension.

B. When the Department determines that a condition exists that presents an immediate threat to public health the Department may take any or all of the following actions to protect the public health:

1. Suspend the shellfish certification in accordance with Title 5 §10004 (3 & 4);

2. Require the holder of the shellfish certificate to initiate a recall, in accordance with Chapter 15.36, of any distributed shellfish that are adulterated or may have become adulterated; and

3. Embargo and destroy any undistributed lots of shellfish that are adulterated or may have become adulterated in accordance with the provisions of Chapter 15.23.

C. If the Commissioner determines that an applicant for renewal of a shellfish certificate is not currently in compliance with shellfish sanitation regulations, or has failed to comply with shellfish sanitation regulations during the previous license period, the Commissioner may refuse renewal of the license in accordance with the following procedures:

1. The Commissioner shall advise the applicant for renewal by certified mail, return receipt requested, of the refusal and the grounds for this refusal.

2. The Commissioner shall advise the applicant for renewal that the applicant has a right to request that an adjudicatory hearing be held before the Department in conformity with 5 M.R.S., Chapter 375 subchapter IV. The Commissioner shall advise the applicant that the hearing must be requested in writing and that the written request must be received by the Department no later than 10 days of receipt by the applicant of the notice, by certified mail, of refusal to renew the shellfish certificate.

3. If an adjudicatory hearing is requested, the Commissioner shall schedule a hearing within 10 days of the Department's receipt of the written request for hearing, unless a longer period is mutually agreed to in writing.

4. Notice of the hearing date, time and location shall be given immediately to the applicant.

15.16 Shellfish Contamination Standards - Biotoxins

A. It shall be unlawful to buy, receive, sell, possess, ship, transport, shuck or otherwise process shellfish in any form, regardless of origin where the shellfish meet the following action levels established by the NSSP Model Ordinance (Chapter 15.02(A) (59)).

1. For paralytic shellfish poisoning (PSP), the toxin concentration equals or exceeds 80 ug/100 mg of

edible portion of raw shellfish;

2. For Domoic acid, Amnesic shellfish poisoning (ASP), the toxin concentration shall not be equal to or exceed 20 ppm in the edible portion of raw shellfish; or

3. For any marine biotoxin-producing organism for which criteria have not been established under the NSSP Model Ordinance, either cell counts in the water column or biotoxin meat concentrations may be used by the Department as the criteria for not allowing the harvest of shellstock.

B. The Department may collect samples of shucked shellfish and shellstock from shellfish certificate holder periodically to determine if shellfish meet the contamination standards, described in Chapter 15.16(A) above.

15.18 Shellfish Tagging and Labeling Requirements

A. All shellfish shipped or transported into, out of, or within the state of Maine must be transported or shipped directly from a shellfish dealer who has been certified in accordance with the provisions of the National Shellfish Sanitation Program in his state or nation of residency, and/or who is listed as a certified shellfish shipper by the Food and Drug Administration's Interstate Certified Shellfish Shipper's List. This paragraph shall not be construed to prohibit transportation of shellfish to a certified dealer within the state of Maine or to a shellfish license holder's home, by a shellfish license holder. Nor shall it prohibit the retail sale of shellstock by a shellfish license holder, from the license holder's home or aquaculture lease site, in accordance with 12 M.R.S. §6601(2).

B. Each dealer certified by the Department must prior to sale securely affix a dealer's tag to each container. Tags must be approved by the Department prior to use and must be at least 2 $\frac{5}{8}$ inches x 5 $\frac{1}{4}$ inches (6.7 x 13.3 cm) in size and be waterproof and durable. It shall be unlawful to ship or transport shellfish unless the container of such shellfish bears, at all times, a waterproof label or tag as described below. Example tags are located at the end of this Chapter. Both sides of the tags may be used. The dealer tag must contain legible and indelible printed information arranged in the following order:

1. The title: "Dealer Tag" must be printed on the top of the tag;
2. The dealer's name and address; except that for bulk tags also list the harvester's name;
3. The dealer's certification number assigned by the Department; accept that for bulk tags add the DMR harvester's license number in addition to the dealer certificate number;
4. The original shipper's certification number including the state abbreviation; or if depurated or bulk tagged the original shellstock shipper's certification number is not required;
5. Date of harvest; or if depurated, the date of depuration processing; or if bulk tagged, add the time of harvest after the date;
6. If wet stored or depurated, the wet storage or depuration cycle or lot number. The wet storage lot number shall begin with the letter "W";

7. The most precise identification of the harvest location (e.g. flat or cove, river or bay, town, state. For example: White's Cove, Nonesuch River, Shellfishville, ME), aquaculture lease site or LPA site as is practicable, including the initials of the state (Maine – ME).

Off shore vessels harvesting mahogany quahogs must provide identification as to the bay (if appropriate) and/or harvesting zones described by the Department;

When the shellstock is bulk tagged the bulk tag must include the following statement: "ALL SHELLSTOCK CONTAINERS IN THIS LOT HAVE THE SAME HARVEST DATE AND AREA OF HARVEST";

8. Type and quantity of shellstock; or if bulk tagged list the type of shellstock and number of individual containers in the lot;

9. When the shellstock has been placed in wet storage and it originated from a state other than Maine, the following statement: "THIS PRODUCT IS A PRODUCT OF (NAME OF STATE) AND WAS WET STORED AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";

10. The following statement, which must appear in bold capitalized type and must be adhered to at all times:

"THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS "; and

11. The following statement, "RETAILERS, INFORM YOUR CUSTOMERS" from the Maine Food Code (01-001 Code of Maine Regulations, Chapter 331) regarding consumer advisories (3-603.11):

"Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

The statement "Keep Refrigerated" or an equivalent statement must be included on the tag.

12. When both the dealer and harvester tags appear on the container, the dealer's tag is not required to duplicate the information on the harvester's tag.

D. It shall be unlawful for any person or persons other than the certified dealer to be in possession of new or unused certified dealer tags.

Exception: Bulk tags where approved for use by the Department.

E. It shall be unlawful for the holder of a Maine shellfish certificate to receive, handle, buy, possess, sell, ship or transport shellfish unless each container of shellfish bears a label or tag as required by this section, Chapter 15.18.

Exception: Bulk tags where approved for use by the Department.

F. The absence of labels or tags as required by this regulation shall be prima facie evidence of violation of these regulations. The absence of required labels or tags shall be grounds for the immediate embargo and destruction of the untagged or unlabeled shellfish.

G. Shellfish tags that do not contain the required information or are altered or mislabeled shall be grounds for immediate embargo and destruction.

15.19 Bulk Tagging of Shellstock

A. When receiving bulk tagged shellfish, the certified dealer must have a Bulk Tagging Plan approved by the Department to ensure that each lot of shellstock is kept separate and identified in a way which prevents non-permitted dealer commingling (Chapter 15.20) or misidentification. The lot may be tagged with a single tag in accordance with Chapter 15.18 and approved by the Department. Dealers choosing to practice bulk tagging shall apply to the Department on an annual basis. The Bulk Tagging Plan must be pre-approved by the Department and must describe the standard operating procedure implemented by the dealer for handling bulk tagged product, during transportation of the product and during processing or repackaging. A list of proposed participating harvesters and/or certified dealers, and their license or certification numbers must be included in the permit request.

B. A dealer receiving bulk tagged shellstock must have an intermediate processing plan approved by the Department which establishes the procedures the dealer shall use to tag the lot during washing, packing, or staging of shellfish to ensure that each lot of shellstock is kept separate and identified in a way which prevents non-permitted dealer commingling (Chapter 15.20) or misidentification under the provisions of Chapter 15.18.

15.20 Tagging of Shellstock during Intermediate Processing

A. When the shellstock is removed from the original container, the dealer shall:

1. Maintain purchase and sales records under the provisions of Chapter 15.24;
2. Maintain the lot identity of all shellstock during any intermediate stage of processing, i.e. washing and/or packing shellstock; and
3. Have a written intermediate processing plan approved by the Department, which establishes procedures the dealer shall use to tag the lot during the washing and packing of shellfish and which includes a Department approved commingling plan to ensure that each lot of shellstock is separated and identified in a way, which prevents commingling or misidentification.

B. The identification shall be provided by:

1. The harvester tag, bulk tag or dealer tag, which meet the requirements of Chapter 15.19; or
2. A tag for each lot of shellstock, which contains the following information:
 - (a) The title: "Intermediate Processing Tag" must be printed on the top of the tag;
 - (b) A statement that "All shellstock containers in this lot have the same harvest date and area of harvest";

- (c) Original dealer certification number;
- (d) Harvest date;
- (e) Harvest area; and
- (f) Number of individual containers in each lot of shellstock container (e.g. a pallet) after washing or packing has been completed.

C. When a dealer has an approved intermediate processing plan, the dealer shall tag each lot of shellstock in accordance with the intermediate processing plan while the lot of shellstock is being processed in the plant.

D. Commingling

Only a Primary Dealer may commingle shellfish products and only with a Department approved commingling plan.

1. The plan shall include provisions that minimize commingling but meet the minimum of:
 - (a) Multiple harvest areas from the same harvest date, and/or
 - (b) Multiple harvest dates from the same harvest area are permitted to be commingled.
 - (c) The shellfish tag and records must indicate which areas and/or which dates from the same harvest area have been commingled; i.e. Quahog Bay / White's Cove, Brunswick commingled or Quahog Bay, Brunswick 11/12 & 11/13 commingled.
2. Shucked product may be commingled if it is in one container and from only two consecutive days processing. The areas commingled must be documented in the days shucking log, also in the sales records.

15.21 Shucked Shellfish Labeling

A. Each individual package containing fresh or fresh frozen shucked shellfish meat shall bear a permanent printed label approved by the Department that is legibly and indelibly marked in accordance with applicable federal and state regulations to contain, but not be limited to, the following:

1. The packer's, distributor's and original shucker's name and address;
2. The original shucker-packer's certification number; and
3. The type and quantity of shucked shellfish in the container.

B. The dealer shall also label each individual package containing less than 64 fluid ounces (1873 ml) of fresh or fresh frozen shellfish with the following:

1. The words "SELL BY DATE" or "BEST IF USED BY" followed by a date when the product would be expected to reach the end of its shelf life;

2. The date shall consist of the abbreviation for the month and number of the day of the month; and

3. For fresh frozen shellfish, the year shall be added to the date.

C. The dealer shall label each individual package containing 64 fluid ounces (1873 ml) or more of fresh or fresh frozen shellfish with the following:

1. The words "DATE SHUCKED" followed by the date shucked located on both the lid and sidewall or bottom of the container;

2. The date shall consist of either the abbreviation for the month and number of the day of the month or in Julian format (YDDD) i.e., the last digit of the four digit year and the three digit number corresponding the day of the year; and

3. For fresh frozen shellfish, the year shall be added to the date (for non-Julian format).

D. A dealer who freezes shucked shellfish shall label all frozen shellfish as frozen in a font of equal prominence immediately adjacent to the type of the shellfish.

E. Shellfish that has been frozen and is thawed must be labeled as previously frozen in a font of equal prominence immediately adjacent to the type of the shellfish.

F. If the dealer uses master shipping cartons, the master cartons are exempt from these labeling requirements when the individual containers within the carton are properly labeled.

G. If the dealer uses lot codes to track shellfish containers, the lot codes shall be distinct and set apart from any date listed on the container.

H. The presence of used, single service containers in a certified shellfish establishment, shall be unlawful.

I. Shucker packers that repack shucked shellfish shall pack and label all shellfish in accordance with Chapter 15.21(B) except that the original date of shucking shall be added to the new repacked container as specified in Chapter 15.21(C)(1) or the original date of shucking shall be used in establishing the SELL BY DATE as specified in Chapter 15.21(B)(1).

J. Each package of fresh or frozen shucked shellfish shall include a consumer advisory. The following statement, from Section 3-603.11 of the Maine Food Code (01-001 Code of Maine Regulations, Chapter 331), or an equivalent statement shall be included on all packages: "Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions."

15.22 Brokers

Any person acting as an independent contractor who ships or transports shellfish and who does not buy or take ownership of the shellfish being transported shall not be required to affix his/her own tag or label.

However, all shellfish transported must be tagged with the name of the consignor and consignee, and the

consignor or other owner of the shellfish shall remain liable for the quality of the shellfish being transported and its conformity with these regulations.

15.23 Embargo Procedure for Shellfish

A. In the event that the Commissioner or his agent determines that shellfish should be embargoed, whether for violation of shellfish sanitation regulations or for any other reason set forth in 12 M.R.S. §6856(6), the shellfish shall be tagged with a "HOLD" label and shall not be sold, shipped, transported, moved or otherwise altered by any person, without the express permission of the Commissioner or his agent.

B. A "HOLD" label shall be affixed to every single container or lot of shellfish subjected to embargo. The "HOLD" label shall bear a number, signifying the identity of the container or lot of embargoed shellfish. The Commissioner shall retain a copy of all current embargo orders or destruct orders, which include the hold number, container or lot description, name and address of the shellfish owner and the reason for embargo. A copy of such orders containing this information shall be given to the owner of the embargoed shellfish.

C. It shall be unlawful to pack shellfish, whether shucked or in shellstock form into mislabeled containers, or to possess mislabeled shellfish. Shellfish shall be considered mislabeled if:

1. The label is absent, bears inaccurate information, or is missing information concerning the identity of the packer, shipper, distributor, the area name, the date of harvest, the date of packing or the type and quantity of shellfish in the container.

D. Shellfish that are mislabeled shall be grounds for immediate embargo, condemnation and destruction as being of unsound or unknown quality, and therefore, unsafe.

E. When shellfish samples indicate that those shellfish contain toxin levels exceeding those described in Chapter 15.17, or the shellfish are suspected of being contaminated or of unsound quality or deleterious to the public health, the Commissioner shall embargo the contaminated shellfish; as well as any other shellfish which are likely to be contaminated in the same vehicle or facility. The Commissioner shall condemn and order destruction of such shellfish in accordance with the embargo authority granted to the Commissioner of Marine Resources in 12 M.R.S. §6856(6).

15.24 Shipping Documents and Records

A. Shipping documents shall accompany each shellfish shipment and be available to the Department upon request.

1. The shipping documents shall contain;

(a) The name, address, and certification number of the shipping dealer;

(b) The name(s) and address (es) of the consignee(s); and

(c) The type and quantity of the shellfish product(s);

- (d) The date and time of shipment; and
- (e) A statement that all shipping conveyances comply with NSSP Guide (Model Ordinance) Chapter IX.04.

2. The receiving dealer shall;

- (a) Maintain a copy of the completed shipping document; and
- (b) Make the shipping document available to the Department upon request.

B. Purchase and sales records shall be maintained by each certified dealer and must meet the following criteria:

- 1. Each dealer shall have a business address at which records are maintained
- 2. Records shall:
 - (a) Be complete, accurate and legible;
 - (b) Contain all of the Department's required information in a form authorized by the Department; and
 - (c) Shall be made available for Department personnel to review and copy upon request.

3. The records must be sufficient to document that;

- (a) Shellfish are from an authorized source (licensed harvester or certified dealer);
- (b) A container of shellfish can be traced back to the specific incoming lot of shellfish from which it was taken; and
- (c) A lot of shucked shellfish or a lot of shellstock can be traced back to the growing area, date of harvest, and if possible, the harvester or group of harvesters.

4. Records shall be maintained in a permanently bound ledger book or other recording method approved by the Department.

5. The records shall be retained:

- (a) For fresh shellfish, for a minimum of one year and
- (b) For frozen shellfish, for at least two years or the shelf - life of the product, whichever is longer.

C. Shucked shellfish logs shall be maintained by shucker packers and must be sufficient to document:

1. Date product was shucked;
2. Product lot code;
3. The harvest area and harvest date;
4. The amount of product shucked; and
5. The total amount of product produced.

D. Shellfish Reports: See Chapter 8.10(A) Landings Program

E. Aquaculture lease holders and LPA license holders shall maintain complete, legible and accurate records for at least two (2) years, which shall include the:

1. Source of shellfish, including seed if the seed is from growing areas that are not in the approved classification;
2. Dates of transplanting and harvest; and
3. Water source, its treatment method, if necessary, and its quality in land based systems pursuant to Chapter 15.32, 15.33, 15.34 and/or 15.35.

15.25 General HACCP Requirements – Hazard Analysis

A. Every dealer shall conduct a hazard analysis to determine the food safety hazards that are reasonably likely to occur for each kind of shellfish product processed by that dealer and to identify the preventative measures that the dealer can apply to control those hazards. Such food safety hazards can be introduced both within and outside the processing plant environment, including food safety hazards that can occur before, during and after harvest. A food safety hazard that is reasonably likely to occur is one for which a prudent dealer would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that it will occur in the particular type of shellfish product being processed in the absence of those controls. In the hazard analysis, the dealer shall consider the critical control points listed in the most recent edition of the FDA's "Fish and Fisheries Products Hazards and Controls Guide", henceforth referred to as the "Guide", as well as any recommended by the Department.

15.26 General HACCP Requirements – HACCP Plan

A. Every dealer shall have and implement a written HACCP plan. A HACCP plan shall be specific to:

1. Each location where shellfish products are processed by that dealer; and
2. Each kind of shellfish product processed by the dealer. The plan may group kinds of shellfish products together, or group kinds of production methods together, if the food safety hazard, critical control points, critical limits, and procedures required to be identified and performed are identical for all shellfish

products so grouped or for all production methods so grouped.

B. The HACCP plan shall, at a minimum:

1. List the food safety hazards that are reasonably likely to occur, as identified in accordance with Chapter 15.25(A) and that thus must be controlled for each shellfish product. Consideration should be given to whether any food safety hazards are reasonably likely to occur as a result of the following:
 - (a) Natural toxins;
 - (b) Microbiological contamination;
 - (c) Chemical contamination;
 - (d) Pesticides;
 - (e) Drug residues;
 - (f) Unapproved use of direct or indirect food or color additives; and
 - (g) Physical hazards;
2. List the critical control points for each of the identified food safety hazards, including as appropriate:
 - (a) Critical control points designed to control food safety hazards introduced outside the processing plant environment, including food safety hazards that occur before, during, and after harvest. At a minimum, the critical control points shall include those identified in the Guide or recommended by the Department, as applicable. As an alternative, the dealer may establish other critical control points, which the dealer can demonstrate to the Department, to provide equivalent public health protection. If the dealer can demonstrate to the Department through a hazard analysis that the food safety hazard is not reasonably likely to occur, the critical control point is not required with the exception of receiving, which shall always be considered a critical control point.
 - (b) Critical control points are designed to control food safety hazards that could be introduced in the processing plant environment. As an alternative, the dealer may establish other critical control points, which the dealer can demonstrate to the Department to provide equivalent public health protection. If the dealer can demonstrate to the Department through a hazard analysis that the food safety hazard is not reasonably likely to occur, the critical control point is not required. At a minimum, the critical control points shall include those identified in the Guide or as recommended by the Department, as applicable.
3. List the critical limits that must be met at each of the critical control points. At a minimum, the critical limits shall include those listed in the Guide or as recommended by the Department, as applicable. As an alternative the dealer may establish other critical limits which the dealer has demonstrated provide equivalent public health protection, with the exception of receiving, which shall always be considered a critical control point. In any case, the critical limits identified in the Guide, or as recommended by the Department, shall be met as components of good manufacturing practices.
4. List the procedures, and frequency thereof, that will be used to monitor each of the critical control points to ensure compliance with the critical limits.
5. Include any corrective action plans that have been developed in accordance with Chapter 15.27, to be followed in response to deviations from critical limits at critical control points.

6. Provide for a record keeping system that documents the monitoring of the critical control points. The records shall contain the actual values and observations obtained during monitoring.

7. List the verification procedures, and frequency thereof, that the dealer will use in accordance with Chapter 15.28.

C. The HACCP plan shall be signed and dated, either by the most responsible individual on site at the processing facility or by a higher-level official of the dealer. This signature shall signify that the dealer has accepted the HACCP plan for implementation.

1. The HACCP plan shall be signed and dated:

- (a) Upon initial acceptance;
- (b) Upon any modification; and
- (c) Upon verification of the plan in accordance with Chapter 15.28.

Sanitation controls may be included in the HACCP plan. However, to the extent that they are monitored in accordance with Chapter 15.31, they need not be included in the HACCP plan, and vice versa.

15.27 General HACCP Requirements – Corrective Actions

A. Whenever a deviation from a critical limit occurs, a dealer shall take corrective action either by:

- 1. Following a corrective action plan that is appropriated for the particular deviation, or
- 2. Following the procedures in Chapter 15.27(C).

B. Dealers may develop written corrective action plans, which become part of their HACCP plans in accordance with Chapter 15.26(B)(5), by which they predetermine the corrective actions that they will take whenever there is a deviation from a critical limit. A corrective action plan that is appropriate for a particular deviation is one that describes the steps to be taken and assigns responsibility for taking those steps, to ensure that:

- 1. No product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation; and
- 2. The cause of the deviation is corrected.

C. When a deviation from a critical limit occurs and the dealer does not have a corrective action plan that is appropriate for that deviation, the dealer shall:

- 1. Segregate and hold the affected product, at least until the requirements of Chapter 15.27(B)(1) and (2) are met;
- 2. Perform or obtain a review to determine the acceptability of the affected product for distribution. An individual or individuals who have adequate training or experience to perform such a review shall perform the review. Adequate training may or may not include training in accordance with Chapter 15.30;

3. Take corrective action, when necessary, with respect to the affected product to ensure that no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation;
 4. Take corrective action, when necessary, to correct the cause of the deviation; and
 5. Perform or obtain timely reassessment by an individual or individuals who have been trained in accordance with Chapter 15.30, to determine whether the HACCP plan needs to be modified to reduce the risk of recurrence of the deviation, and modify the HACCP plan as necessary.
- D. All corrective actions taken in accordance with this section shall be fully documented in records that are subject to verification in accordance with Chapter 15.28 and the record keeping requirements of Chapter 15.29.

15.28 General HACCP Requirements - Verification

A. Every processor shall verify that the HACCP plan is adequate to control food safety hazards that are reasonably likely to occur, and that the plan is being effectively implemented. Verification shall include, at a minimum:

1. A reassessment of the adequacy of the HACCP plan at least annually and whenever any changes occur that could affect the hazard analysis or alter the HACCP plan in any way. These changes may include: Raw materials or source of raw materials, product formulation, processing methods or systems, finished product distribution systems, or the intended use or consumers of the finished product.

2. An individual or individuals who have been trained in accordance with Chapter 15.30 shall perform the reassessment.

B. The HACCP plan shall be modified immediately whenever a reassessment reveals that the plan is no longer adequate to fully meet the requirements of Chapter 15.26(B).

C. Ongoing verification activities shall include:

1. A review of any consumer complaints that have been received by the dealer to determine whether they relate to the performance of critical control points or reveal the existence of unidentified critical control points;

2. The calibration of process-monitoring instruments; and

3. At the option of the dealer, the performance of periodic end product or in-process testing.

D. A review, including signing and dating, shall occur within one (1) week of the day that the records are made, by an individual who has been trained in accordance with Chapter 15.30, of the records that document:

1. The monitoring of critical control points. The purpose of this review shall be, at a minimum, to

ensure that the records are complete and to verify that they document values that are within the critical limits;

2. The taking of corrective actions. The purpose of this review shall be, at a minimum, to ensure that the records are complete and to verify that appropriate corrective actions were taken in accordance with Chapter 15.27; and

3. The calibrating of any process monitoring instruments used at critical control points and the performing of any periodic end product or in process testing that is part of the dealer's verification activities. The purpose of these reviews shall be, at a minimum, to ensure that the records are complete, and that these activities occurred in accordance with the processor's written procedures.

E. Dealers shall immediately follow the procedures in Chapter 15.27 whenever any verification procedure, including the review of a consumer complaint, reveals the need to take a corrective action.

F. The calibration of process-monitoring instruments, and the performing of any periodic end-product and in-process testing in accordance with Chapter 15.28 shall be documented in records that are subject to the records keeping requirements of Chapter 15.29.

15.29 General HACCP Requirements - HACCP and Sanitation Standard Operating Procedures (SSOP's) Records

A. All records required by monitoring HACCP and SSOP's shall include:

1. The name and location of the dealer;
2. The date and time of the activity that the record reflects;
3. The signature or initials of the person performing the operation; and
4. Where appropriate, the identity of the product and the production code, if any. Processing and other information shall be entered on the records at the time that it is observed.

B. All records required by monitoring HACCP and SSOP's shall be retained at the processing facility for at least one (1) year after the date they were prepared in the case of refrigerated products and for at least two (2) years after the date they were prepared in the case of frozen products.

C. Records that relate to the general adequacy of equipment or processes being used by a processor, including the results of scientific studies and evaluations, shall be retained at the processing facility for at least two (2) years after their applicability to the product being produced at the facility.

D. If the processing facility is closed for a prolonged period between seasonal operations, the records may be transferred to some other reasonably accessible location at the end of the seasonal operations but shall be immediately returned for official review upon request.

E. The maintenance of records on computers is acceptable, provided that appropriate controls are implemented to ensure the integrity of the electronic data and electronic signatures.

15.30 General HACCP Requirements - Training

A. At a minimum, the following functions shall be performed by an individual who has successfully completed training in the application of HACCP principles to shellfish processing at least equivalent to that received under standardized curriculum recognized as adequate by the FDA or who is otherwise qualified through job experience to perform these functions:

1. Developing a HACCP plan, which could include adapting a model or generic-type HACCP plan that is appropriate for a specific processor, in order to meet the requirements of Chapter 15.26;
2. Reassessing and modifying the HACCP plan in accordance with the corrective action procedures specified in Chapter 15.27 and the HACCP plan in accordance with the verification activities specified in Chapter 15.28; and
3. Performing the record review required by Chapter 15.29.

B. Job experience will qualify an individual to perform these functions if it has provided knowledge at least equivalent to that provided through the standardized curriculum as determined by the Department.

C. The trained individual need not be an employee of the dealer.

15.31 General Sanitation Requirements and Monitoring

A. Each dealer shall monitor conditions and practices that are both appropriate to the plant and the food being processed with sufficient frequency to ensure, at a minimum, conformity with the requirements specified in Chapter 16. The requirements specified in these Sections relate to the following sanitation items:

1. Safety of the water that comes into contact with food or food contact surfaces, or is used in the manufacture of ice, hereinafter referred to as: Safety of water for processing and ice production;
2. Condition and cleanliness of food contact surfaces, including utensils, gloves, and outer garments, and from raw product to cooked product, hereinafter referred to as: Condition and cleanliness of food contact surfaces;
3. Prevention of cross contamination from unsanitary objects to food, food packaging materials, and other food contact surfaces, including utensils, gloves, and outer garments, and from raw product to cooked product, hereinafter referred to as: Prevention of cross contamination;
4. Maintenance of hand washing, hand sanitizing, and toilet facilities, hereinafter referred to as: Maintenance of hand washing, hand sanitizing and toilet facilities;
5. Protection of food, food packaging material, and food contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate, and other chemical, physical, and biological contaminants, hereinafter referred to as: Protection from adulterants;

6. Proper labeling, storage, and use of toxic compounds, hereinafter referred to as: Proper labeling, storage, and use of toxic compounds;

7. Control of employee health conditions that could result in the microbiological contamination of food, food packaging materials, and food contact surfaces, hereinafter referred to as: Control of employees with adverse health conditions; and

8. Exclusion of pests from the food plant hereinafter referred to as: Exclusion of pests.

B. Each dealer shall maintain sanitation control records that, at a minimum, document the monitoring and corrections prescribed by Chapter 15.29(A). These records are subject to the requirements of Chapter 15.29. While monitoring of those specified conditions and practices that are not appropriate to the plant and the food being processed is not required, compliance with such conditions and practices remains mandatory.

C. Sanitation controls may be included in the HACCP plan as required by Chapter 15.28. However, to the extent that they are monitored in accordance with Chapter 15.31 they need not be included in the HACCP plan, and vice versa.

15.32 Wet Storage in Artificial Bodies of Water or in Natural Bodies of Water (Onshore or Offshore)

A. Any dealer choosing to practice wet storage in artificial bodies of water, onshore flow through systems or in offshore waters, shall apply to the Department on an annual basis for a permit for each wet storage site or operation. Continuing operations without any changes from the prior year may submit the one page Renewal Form for Wet Storage Permit, found on the DMR website.

1. The written application must include:

(a) The name of the dealer (as it appears on certificate), address, telephone number and certification number included in an application requesting a permit for wet storage.

(b) A map indicating the exact location (GPS coordinates reported in decimal degrees) being considered for near shore storage sites and floats. Onshore facilities must submit a map indicating location of facility and source water used for wet storage. This must include, A detailed design plan of the proposed on-shore storage facility, a complete description of the source of water to be used for wet storage and details of any water treatment systems to be used. Any water treatment systems to be used must be approved by the Department.

(c) A physical description, diagram or photograph of the design of the wet storage structure or system. All plans for construction or remodeling of onshore wet storage facilities shall be reviewed and approved by the Department prior to commencing construction.

(d) Local code enforcement or plumbing inspector's inspection form to show, to the satisfaction of the Department, that all new and/or remodeling of existing plumbing and sewage within the facility meets state and local requirements.

(e) A copy of the Department of Environmental Protection (DEP) National Pollution Elimination

Discharge System (NPDES) permit or DEP letter of “no impact”; and

(f) A written standard operating procedure, which includes:

(i) A description of the purpose for the wet storage operation (i.e. holding, conditioning, or salinization) and any species specific physiological factors that may affect design criteria.

(ii) How product is tagged or identified during wet storage and,

(iii) How product is handled and tagged when it comes out of wet storage.

2. Wet storage must strictly comply with any and all provisions contained in the Department's written approval.

B. Prior to commencing construction, all plans for construction or remodeling of onshore wet storage facilities or operations shall be reviewed and authorized by the Department.

C. Each onshore wet storage operation shall meet the following design, construction, and operating requirements.

1. Effective barriers shall be provided to prevent entry of birds, animals and vermin into the area.

2. Storage tanks and related plumbing shall be constructed of safe material that is easily cleanable;

3. Tanks shall be constructed so as to be easily accessible for cleaning and inspections, to be self-draining and fabricated from nontoxic, corrosion resistant materials; and

4. Plumbing shall be designed and installed in compliance with the Maine Plumbing Code so that cleaning and sanitizing can be conducted on a regular schedule specified in an operating procedure so as to prevent contamination of the tank and water.

5. Storage tank design, dimensions and construction are such that adequate clearance shall be maintained between shellfish and the tank bottom.

6. Shellfish containers must be constructed of safe materials and have a mesh type construction, which allows free flow of water to all shellfish in the containers.

7. Floors, walls and ceilings shall be constructed; and lighting, plumbing and sewage disposal systems shall be installed in compliance with appropriate sections of Chapter 16.

D. Onshore flow through systems and offshore wet storage sites shall meet the requirements for classification as approved or conditionally approved in the open status while shellstock is being held in storage.

E. When areas classified as approved or conditionally approved are placed in a status other than open, any shellstock in wet storage in that area shall be:

1. Subjected to relaying or depuration prior to human consumption; or
 2. Held in the wet storage site until the area is returned to the open status.
- F. Different lots of shellstock shall not be commingled in wet storage without a Department approved commingling plan (Chapter 15.20).
- G. If more than one lot of shellstock is held in wet storage at one time lot identity shall be maintained.
- H. Shellstock held or washed in water containing any other marine organism(s) shall be grounds for immediate embargo and destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.
- I. The offshore site evaluation shall include:
1. The criteria in Chapter 15.32(D); and
 2. The location of the offshore storage sites and floats provided on a chart and including the GPS coordinates (in decimal degrees).
- J. Each offshore wet storage operation shall meet the following design, construction and operating requirements:
1. Effective barriers shall be provided to prevent entry of birds, animals and vermin into the area.
 2. Shellfish containers shall be constructed of safe materials and have a mesh type construction which allows free flow of water to all shellfish in the containers.

15.33 Onshore Wet Storage Water Supply Requirements

- A. Except for wells, the quality of the surface source water prior to treatment shall meet, at a minimum, the bacteriological standards for the restricted classification.
- B. Any well used as source water for wet storage shall meet the requirements of Chapter 16.07.
- C. Except when the source of the water is a growing area in the approved classification, a water supply sampling schedule shall be included in the dealer's operating procedures and water shall be tested according to the schedule.
- D. Results of water samples and other tests to determine the suitability of the water supply shall be maintained for at least 2 years.
- E. Disinfection or other water treatment such as the addition of salt cannot leave residues unless they are Generally Recognized as Safe (GRAS) and they do not interfere with the shellstock's survival, quality or activity during wet storage.
- F. Disinfected water entering the wet storage tanks shall have no detectable levels of the coliform

group.

G. When the laboratory analysis of a single sample of disinfected water entering the wet storage tanks shows any positive result for the coliform group, daily sampling shall be immediately instituted until the problem is identified and eliminated.

H. When the problem that is causing disinfected water to show positive results for the coliform group is eliminated, the effectiveness of the correction shall be shown on the first operating day following correction through the immediate collection, within a 24 hour period, of a set of three samples of disinfected water and one sample of the source water prior to disinfection.

1. For water that is disinfected by ultra-violet treatment, turbidity shall not exceed twenty (20) nephelometric turbidity units (NTUs) measured in accordance with Standard Methods for the Examination of Water and Wastewater, APHA.

2. The disinfection unit(s) for the water supply shall be cleaned and serviced as frequently as necessary to ensure effective water treatment.

I. If the system is of continuous flow – through design, water from a growing area classified as:

1. Approved may be used, without disinfection, in wet storage tanks provided that the near shore water source used for supplying the system meets the approved classification bacteriological criteria at all times the shellstock are being held in wet storage; or

2. Other than approved may be used if the source water is continuously subjected to disinfection and it is sampled daily following disinfection.

J. When a source classified as other than approved is used, a study shall be required to demonstrate that the disinfection system will consistently produce water that tests negative for the coliform group under normal operating conditions. The study shall:

1. Include five sets of three samples from each disinfection unit collected for five consecutive days at the outlet from the disinfection unit or at the inlet to at least one of the wet storage tanks served by the disinfection system;

2. Include one sample daily for five consecutive days from the source water prior to disinfection;

3. Use NSSP recognized methods to analyze the samples to determine coliform levels;

4. Require all samples of disinfected water to be negative for the coliform group; and

5. Be repeated if any sample of disinfected water during the study is positive for the coliform group.

K. Once approved for use, the water system shall be sampled daily to demonstrate that the disinfected water is negative for the coliform group.

L. Where multiple tank systems use a common water supply system for bivalve mollusks and other

species, wet storage water shall be effectively disinfected prior to entering tanks containing bivalve mollusks.

M. Shellstock held or washed in water containing any other marine organism(s) shall be grounds for immediate embargo and destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.

15.34 Onshore Wet Storage Using a Recirculating Water System

A. A study shall be required to demonstrate that the disinfection system for the recirculating system will consistently produce water that tests negative for the coliform group under normal operating conditions. The study shall meet the requirements in Chapter 15.33.

B. Once approved for use, the recirculating water system shall be sampled weekly to demonstrate that the disinfected water is negative for the coliform group.

C. When make-up water of more than 10 percent of the water volume in the recirculating system is added from a growing area source classified as other than approved, a set of three samples of disinfected water and one sample of the source water prior to disinfection shall be collected within a 24 hour period to reaffirm the ability of the system to produce water free from the coliform group.

D. When ultra-violet treatment is used as the water disinfectant, each time new ultraviolet bulbs are installed a set of three samples of disinfected water and one sample of the source water prior to disinfection shall be collected within a 24 hour period to reaffirm the ability of the system to produce water free from the coliform group.

E. Shellstock held or washed in water containing any other marine organism(s) shall be grounds for immediate embargo and destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.

15.35 Wet Storage Shellstock Handling

A. Shellstock shall be thoroughly washed with water from a source authorized by the Department and culled prior to wet storage in tanks.

1. Exception: Due to the adverse effects of culling on mussel physiology, culling of mussels may be done after wet storage, subject to permission from the Department.

B. Unless the dealer is following the Department's written commingling management plan, different lots of Shellstock shall not be commingled during wet storage in tanks.

1. If more than one lot of shellstock is being held in wet storage at the same time, the identity of each lot of shellstock shall be maintained.

C. Shellstock held or washed in water containing any other marine organism(s) shall be grounds for immediate embargo and destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.

15.36 Recall Procedure

- A. Certified dealers shall adopt written procedures, approved by the Department for conducting recalls based on, and complementary to, the FDA Enforcement Policy on Recalls, CFR Title 21, Chapter 1, Subchapter A, Part 7 –Enforcement Policy, Appendix B, APB – 1.
- B. Certified dealers shall follow their written recall procedures to include timely notification of the Department, timely notification to the consignee(s) who received the affected product and effective removal or correction of the affected product.

15.37 Buying Station

A. Definitions

- 1. “Buying station” means a truck that is leased, owned or rented by the certified dealer and which is used to transport soft shell clam shellstock purchased at a location other than the dealer’s permanent facility. The truck must be properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of the shellstock in accordance with Chapter 16.23 and Chapter 15.37(B)(6) below.
- 2. “State Authorized Buying Station Representative” means an individual who has been authorized by the DMR to oversee buying station activities. The buying station representative may be a third party contractor or an employee of the permit holder.

B. Compliance

Certified dealers choosing to operate a buying station shall apply to the Department on an annual basis for a permit. Continuing operations without any changes from the prior year may submit the one page Renewal Form for Buying Station Permits, found on the DMR website. The dealer may be permitted if the following criteria are met:

- 1. The truck used as a buying station must be leased, owned or rented by the certified dealer and licensed with the appropriate supplemental license for that truck in accordance with 12 M.R.S. §6851.
- 2. The dealer must be certified in accordance with Chapter 15.05.
- 3. All shellstock purchased at the buying station must be transported by the certified dealer to the permanent facility for which that holder’s certification was issued.
- 4. None of the following activities may occur on or in connection with a buying station: washing of shellstock, packing, tagging, distribution to any person or entity other than the certified dealer’s facility.
- 5. The HACCP plan and HACCP records must be kept with the truck. A copy of the HACCP plan and records that apply to the buying station/truck must be separately identified and kept with the buying station/truck.

6. In addition to the requirements of Chapter 16.23, any truck used as a buying station must meet the following requirements:

- (a) The trucks must have mechanical refrigeration capable of maintaining an ambient air temperature in the storage area of 45° F (7.2° C) or less.
- (b) The truck must be equipped with an automatic time / temperature recording device that is operational during the time that buying starts and until the truck is returned to the permanent facility. The record of the time/temperature recording device must accompany the Buying Station Activity Log for each purchase trip. Records for fresh shellstock must be maintained for a minimum of 1 year; and for frozen shellfish, for at least two years or the shelf-life of the product, whichever is longer;
- (c) The absence of or lack of operational mechanical refrigeration and/or an automatic time/temperature recording device as required by this regulation shall be prima facie evidence of violation of these regulations and shall also be grounds for the immediate embargo and destruction of the shellstock on the truck.
- (d) Water used for sanitation of the truck must be from an approved water source at the certified dealer's permanent facility pursuant to Chapter 16.07.

7. Performance Bond

Any buying station permit applicant shall be required by the Commissioner to post a surety company's performance bond in the sum of Five Thousand Dollars (\$5,000.00), payable to the Treasurer State of Maine and conditioned so as to ensure faithful fulfillment of all duties and obligations imposed by law and regulation upon buying station permit holders. The bond must be delivered to the Commissioner prior to the reinstatement, renewal or granting of a buying station permit. Any adjudication in a civil proceeding or conviction in a criminal proceeding for a violation of the laws or regulations pertaining to buying station permit holders shall be reported immediately to the bonding company by the Commissioner who may obtain forfeiture of the bond upon presentation of a court-certified copy of the record of the judgment or conviction.

8. State Authorized Buying Station Representative Requirements

- (a) Each buying station permit holder must submit an application to the Department on an annual basis identifying the names and addresses of all individuals who the certificate holder intends to use as state authorized buying station representatives. The Commissioner may refuse to authorize any person that he determines to be unsuitable to serve as a buying station representative, taking into account, among other things, whether that person has a record of having committed marine resource law violations. An individual who has been convicted of a marine resources law violation within the previous 7 years is not eligible as an authorized representative unless a waiver from this requirement has been granted by the commissioner for good cause as determined by the commissioner in his or her discretion.
- (b) The buying station representative must supervise all activities associated with the buying station permit and keep accurate records in accordance with this chapter. These records must be available for inspection by Department personnel at all times.
- (c) The state authorized buying station representative must maintain a buying station activity log on forms supplied by the Department which includes, but is not limited to, the date of purchase, the start time and end time of buying, the total number of containers purchased at the end of the purchasing activity, area

harvested, names of all harvesters and their current, valid, shellfish harvester's license number, the quantity of shellstock purchased from each harvester, time of arrival at the certified dealer's fixed facility, and the number of the seal used to lock the truck (also see sections 15.37(B)(9)&(10)). One copy must go with the truck and one copy must be maintained by the buying station permit holder. The records must be kept for 2 years. These records must be available for inspection by Department personnel at all times.

(d) The buying station representative must call the appropriate Maine State Police communications center to notify the local marine patrol officer in the event an emergency prevents the buying station truck from returning directly to the permanent facility.

9. Transportation and Delivery of Shellstock from the Buying Station to the Permanent Facility
All shellstock purchased at a permitted buying station must be placed into an approved truck and the truck must be sealed immediately. Unless otherwise authorized by Marine Patrol, all shellstock harvested must be transported directly to the permanent facility immediately after purchasing is completed at that location.

(a) The trucks must be sealed with state seals, issued to buying station representatives by the Department to the certified dealer. The buying station representative must record the seal number, the time the shellstock were placed in the truck, the time the truck arrived at the permanent facility, and the time the seal was removed from the truck at the permanent facility, on the buying station activity log.

10. State Seals

The Department will issue state seals for buying station permit purposes only to a certified dealer with a buying station permit. It shall be unlawful for any person, other than a buying station permit holder or buying station representative, to possess these seals. Unused seals must be submitted to the Department of Marine Resources upon cancellation or suspension of a buying station permit, or revocation or suspension of a certification. If the seal number is not confirmed or there is evidence of tampering, Marine Patrol must be notified immediately.

11. Supervision

(a) The holder of a shellfish certificate shall be responsible for the supervision of all activities associated with the buying station permit.

(b) Supervision of all buying station activities shall be sufficient to ensure compliance with applicable regulations.

(c) Lack of supervision and responsibility for the buying station permit, including the non-production of records required to be maintained, shall be grounds for immediate suspension of the permit.

(d) The buying station operation shall be effectively supervised by the certified dealer or the state authorized buying station representative to assure that all the shellstock are actually delivered to the certified dealer's permanent facility. Control procedures shall preclude any opportunity for shellstock to be inadvertently diverted to sale for human consumption in accordance with Chapter 15.03(B). Controls must be applied to all phases of the operation including purchasing, transportation, record keeping and the security of the shellstock once purchased and until the time it is delivered to the certified dealer's permanent facility.

12. Any violation of this regulation and/or the terms of a permit or any other shellfish sanitation law may result in the suspension of the buying station permit in accordance with 12 M.R.S. §6371. Additional conditions may be added to a permit at the discretion of the Commissioner.

C. Application for Buying Station Permit

Buying station permit applications will be reviewed and issued based on the applicant's ability to meet the criteria for safe operations and the availability of a state authorized buying station representative to supervise the buying station activities.

Persons may apply in writing to the Department for a buying station permit or obtain the application online at the DMR website: www.maine.gov/dmr.

The written application must include:

1. The Dealer's name, address, business phone, email address, fax number and certification number.
2. Make, model, VIN number, registration, wholesale seafood supplemental license number, DMR inspection decal number and a recent, current photograph of the truck rented, leased or owned by the certified dealer proposed to be used as the buying station.
3. Type and model of mechanical refrigeration unit (reefer) and the type and model of the automatic time/temperature recording device.
4. Standard operating procedure for the buying station including the name and address of the individual(s) operating the buying station; and,
5. A HACCP plan for operating the buying station (to include details for sanitizing, storage for sanitizers, proof of approved water source) in accordance with Chapter 15.25 through 15.30 and Chapter 16.
6. The name, phone number and address of a proposed state authorized buying station representative(s) to supervise the activities.
7. A copy of the surety companies performance bond pursuant to Chapter 15.37(B)(7).

15.18(B) Sample Dealer tags

Note: Both sides of the tags may be used.

DEALER TAG

Name: DMR Certificate #:

Address: Original Shipper

Cert.# / State:

Country of Origin:

Harvest Date: Shellfish Type:

Harvest Area: Quantity:

THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND
THEREAFTER KEPT ON FILE FOR 90 DAYS

KEEP REFRIGERATED

RETAILERS, INFORM YOUR CUSTOMERS:

“Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, poultry, or shellfish reduces the risk of food borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.”

INTERMEDIATE PROCESSING TAG

ALL SHELLSTOCK CONTAINERS IN THIS LOT HAVE THE
SAME HARVEST DATE AND AREA OF HARVEST

KEEP REFRIGERATED

Original dealer

Certification number:

Harvest date:

Harvest area:

Number of individual containers in

Each lot of shellstock container (e.g. a pallet)

After washing or packing has been completed:

DEALER TAG - WET STORAGE

Name:

Address:

Country of Origin:

DMR Certificate #:

Original Shipper Cert.#/State:

Harvest Date:

Harvest Area:

Shellfish Type:

Quantity:

THIS PRODUCT IS A PRODUCT OF (NAME OF STATE):

& WAS WET STORED AT (FACILITY CERT. NUMBER):

FROM (DATE):

TO (DATE):

Lot #: W

THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND
THEREAFTER KEPT ON FILE FOR 90 DAYS
KEEP REFRIGERATED

RETAILERS, INFORM YOUR CUSTOMERS: "Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, poultry, or shellfish reduces the risk of food borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information."

DEALER TAG - DEPURATION

Name:

Address:

DMR Certificate #:

Depuration

Processing Date:

Depuration Lot #:

Harvest Area:

Shellfish Type:

Quantity:

THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND
THEREAFTER KEPT ON FILE FOR 90 DAYS

RETAILERS, INFORM YOUR CUSTOMERS: "Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, poultry, or shellfish reduces the risk of food borne illness. Individuals with certain health

conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.”

DEALER TAG - BULK

Name:

Address:

DMR Certificate #:

Harvester Name:

DMR License #:

Harvest Date & Time:

Harvest Area: with Bay or Zone#:

ALL SHELLSTOCK CONTAINERS IN THIS LOT HAVE THE SAME HARVEST DATE AND AREA OF HARVEST

Shellfish Type:

Of Individual Containers in the lot:

THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS

RETAILERS, INFORM YOUR CUSTOMERS: “Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, poultry, or shellfish reduces the risk of food borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.”

15.18(B) Sample Dealer tags

Note: Both sides of the tags may be used.

DEALER TAG

Name:	DMR Certificate # :
Address:	Original Shipper
	Cert.# / State:
	Country of Origin:
Harvest Date:	Shellfish Type:
Harvest Area:	Quantity:

**THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND
THEREAFTER KEPT ON FILE FOR 90 DAYS**

KEEP REFRIGERATED

RETAILERS, INFORM YOUR CUSTOMERS:

"Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, poultry, or shellfish reduces the risk of food borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information."

INTERMEDIATE PROCESSING TAG

**ALL SHELLSTOCK CONTAINERS IN THIS LOT HAVE THE
SAME HARVEST DATE AND AREA OF HARVEST KEEP
REFRIGERATED**

Original dealer
certification number:

Harvest date:

Harvest area:

Number of individual containers in
each lot of shellstock container (e.g. a pallet)
after washing or packing has been completed:

DEALER TAG - WET STORAGE

Name:

Address:

Country of Origin:

DMR Certificate #:
Original Shipper Cert.#/State:

Harvest Date:

Harvest Area:

Shellfish Type:
Quantity:

**THIS PRODUCT IS A PRODUCT OF
(NAME OF STATE):
& WAS WET STORED AT (FACILITY
CERT. NUMBER):
FROM (DATE):
TO (DATE):**

**THIS TAG IS REQUIRED TO BE
ATTACHED UNTIL CONTAINER IS
EMPTY OR IS RETAGGED AND
THEREAFTER KEPT ON FILE FOR 90
DAYS
KEEP REFRIGERATED**

**RETAILERS, INFORM YOUR
CUSTOMERS:** "Thoroughly cooking foods
of animal origin such as beef, eggs, fish,
lamb, poultry, or shellfish reduces the risk of
food borne illness. Individuals with certain
health conditions may be at higher risk if
these foods are consumed raw or
undercooked. Consult your physician or
public health official for further information."

DEALER TAG - DEPURATION

Name:

Address:

DMR Certificate #:

Depuration
Processing Date:

Depuration Lot #:

Harvest Area:

Shellfish Type:

Quantity:

**THIS TAG IS REQUIRED TO BE
ATTACHED UNTIL CONTAINER IS
EMPTY OR IS RETAGGED AND
THEREAFTER KEPT ON FILE FOR 90
DAYS**

**RETAILERS, INFORM YOUR
CUSTOMERS:** "Thoroughly cooking foods
of animal origin such as beef, eggs, fish,
lamb, poultry, or shellfish reduces the risk of
food borne illness. Individuals with certain
health conditions may be at higher risk if
these foods are consumed raw or
undercooked. Consult your physician or
public health official for further information."

DEALER TAG - BULK

Name:

Address:

DMR Certificate #:

Harvester Name:
DMR License #:

Harvest Date & Time:

Harvest Area: with Bay or Zone#:

**ALL SHELLSTOCK CONTAINERS IN
THIS LOT HAVE THE SAME HARVEST
DATE AND AREA OF HARVEST**

Shellfish Type:

of Individual Containers in the lot:

**THIS TAG IS REQUIRED TO BE
ATTACHED UNTIL CONTAINER IS
EMPTY OR IS RETAGGED AND
THEREAFTER KEPT ON FILE FOR 90
DAYS**

**RETAILERS, INFORM YOUR
CUSTOMERS:** "Thoroughly cooking foods
of animal origin such as beef, eggs, fish,
lamb, poultry, or shellfish reduces the risk of
food borne illness. Individuals with certain
health conditions may be at higher risk if
these foods are consumed raw or
undercooked. Consult your physician or
public health official for further information."

Chapter 16: Uniform Physical Plant Equipment and Operation Requirements

16.01 Compliance

Each dealer shall comply with all laws and regulations relating to shellfish handling and sanitation, including, but not limited to, the requirements specified in Chapter 15, Chapter 17, Chapter 18, Chapter 19 and Chapter 20 that are appropriate to the plant and the food being processed.

16.02 Physical Plant Site and Arrangement

- A. To be certified for shellfish handling pursuant to 12 M.R.S.A. §6856, the shellfish facility must be located on a site where the physical plant will not be flooded by high tides.
 - 1. If the physical plant is flooded by tide or other causes;
 - (a) All activities shall be discontinued immediately and resumed only after waters have receded and the building has been cleaned and sanitized,
 - (b) Any shellfish, packaging materials, including wooden crates, coming into contact with the flood waters shall be destroyed.
- B. The grounds around the certified establishment shall be free from conditions that can result in contamination of shellfish; including, but not limited to, the following:
 - 1. Dusty or bumpy roads, yards or parking lots that may constitute a source of contamination in areas where shellfish are exposed;
 - 2. Inadequately drained areas that contribute to shellfish contamination through seepage or foot-borne filth, or act as a breeding ground for insects and microorganisms; and
 - 3. Litter, improperly stored equipment, waste, refuse, or uncut weeds or grass within the immediate vicinity of the plant buildings that may act as an attractant, breeding place, or harborage for rodents, insects and other pests.
- C. If the grounds around the certified facility are bordered by grounds over which the dealer has no ability to control the conditions described in Chapter 16.02(B)(1-3) above, then proper care must be exercised in the plant, through inspection, extermination, or other means, to effectively exclude pests, dirt, and other filth that may be a source of shellfish contamination.
- D. Each type of shellfish handling activity, whether receiving and shipping, holding, shucking or packing, shall be conducted in a separate room, or in well defined separate areas within the same room.
 - 1. Shellfish packing rooms shall be of sufficient size to permit sanitary handling of the product and thorough cleaning of the equipment.
 - 2. The physical facilities shall be maintained in good repair.

16.03 Floors

- A. All floors in a certified shellfish establishment shall be constructed of impervious material, which is smooth, even surfaced, and graded to drain quickly.

- B. All floors shall be maintained in good condition and be free from cracks or other flaws which might interfere with proper cleaning or drainage.
- C. Junctions between floors and walls shall be sealed and impervious to water.

16.04 Walls and Ceilings

- A. In rooms where shellfish are stored, shucked, packed, handled, or otherwise processed or where utensils, food handling equipment, and packaging materials are stored, washed, or handled all interior surfaces shall be impervious, smooth, easily cleanable, light colored, corrosion resistant and kept in good repair.
- B. All exterior and interior doors in a shellfish establishment shall be constructed and hung so as to open outward and to provide a tight seal sufficient to prevent the entrance of rodents or flies into the establishment.
 - 1. All doors shall be kept in good repair and if part of the contiguous wall in the processing area must be constructed in compliance with Chapter 16.04(A).
 - 2. Strip curtains shall be kept in good repair and must be constructed in compliance with Chapter 16.04(A).

16.05 Lighting

- A. Ample natural and/or artificial light shall be provided in all rooms of the shellfish establishment.

16.06 Heating, Cooling and Ventilation

- A. Ventilation, heating, or cooling systems shall not create conditions that may cause the shellfish products to become contaminated.
- B. Mechanical refrigeration units (reefers) shall maintain temperatures at or below 45° F, and shall be equipped with:
 - 1. Automatic temperature regulating controls; and
 - 2. Calibrated thermometer(s).

16.07 Water

- A. Source
 - 1. A certified shellfish establishment shall provide a potable water supply from an approved source that is:
 - (a) A public water system; as defined by the Maine State Department of Health and Human Services; or
 - (b) A non-public water system that is constructed, maintained and operated according to law.
 - 2. The potable water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

B. Quality Standards

1. Water from a public water system shall meet 40 CFR 141 - National Primary Drinking Water Regulations and the State of Maine Rules Relating to Drinking Water, CMR, 10-144 Chapter 231 and;
2. Water from a nonpublic water system shall meet state drinking water quality standards.
3. State drinking water standards include:
 - (a) Zero (0) colony forming units of Coliform bacteria per 100 milliliters of sample;
 - (b) 10 ppm nitrate maximum; and
 - (c) 1 ppm nitrite maximum
4. All new public water systems shall test for organic, inorganic contaminants and bacteria as required by the Safe Drinking Water Act, and obtain "new well approval" from the Department of Human Services, Drinking Water Program, or, if not a regulated Public Water System, shall sample as indicated in Chapter 16.07(B)(5).
5. Sampling
 - (a) Water from a nonpublic water system shall be sampled and tested every six months for coliform bacteria.
 - (b) Samples shall be analyzed in a laboratory recognized by the State of Maine Health and Environmental Testing Laboratory as being certified for testing for the specific parameters to be analyzed.
6. Sample Report

All past water sample results for the establishment shall be retained on file in the facility for review by the Department.
7. Capacity
 - (a) The water source and system shall be of sufficient capacity to meet the peak water demands of the facility.
 - (b) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the facility.
8. Pressure

Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water. In the event of a temporary interruption in the approved water supply under Chapter 16.07(B)(9), however, the water supply need not be under pressure.
9. System

Water shall be received from the source only with prior approval from the Department through the use of:

- (a) An approved public water main; or
- (b) One or more of the following that shall be constructed, maintained, and operated according to law:
 - (i) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances;
 - (ii) Water transport vehicles; and
 - (iii) Water containers.

10. Alternative Water Supply

Water meeting the requirements specified under Chapter 16.07(A) and (B) shall be made available for a facility with a temporary interruption of its water supply through:

- (a) A supply of containers of commercially bottled drinking water;
- (b) One or more closed portable water containers;
- (c) An enclosed vehicular water tank;
- (d) An on-premises water storage tank; or
- (e) Piping, tubing, or hoses connected to an adjacent approved source.

C. Requirements for non-public water supply:

1. The dealer shall be required to submit a water sample, testing for the presence of bacteria, nitrate and nitrite, as determined by a Department of Human Services (DHS) certified laboratory prior to certification.
2. The dealer shall make arrangements for Department of Marine Resources personnel or persons recognized by the Department to collect the water sample to be tested at laboratories approved or certified by the Department of Marine Resources:
 - (a) At least every 6 months while the water supply is in use;
 - (b) After the water supply has been repaired and disinfected; and
3. The water system shall be developed and maintained as required by the Maine Department of Marine Resources.
4. A report from the Department of Human Services, the Department of Marine Resources or other certified testing laboratory, which indicates the water supply is not potable, is cause for immediate suspension of the shellfish certificate for the protection of the public health.

D. Operation

1. Any steam used in food processing or that comes in contact with food contact surfaces shall be free from any additives, or deleterious substances consistent with federal and state laws and regulations.

- E. All private water systems using continuous disinfection shall, in addition to the requirements of the rules relating to drinking water, conform to the requirements of this rule.
1. Where continuous disinfection is required pursuant to this chapter the means of disinfection shall conform to the following requirements:
 - (a) All chemical disinfectants shall be readily available;
 - (b) The residual of chemical disinfectant shall be measured and recorded daily by the user in accordance with Chapter 15.29;
 - (c) Ultraviolet light (UV) disinfection systems shall conform to specifications and standards set by the American National Standards (ANSI) and the National Science Foundation (NSF) for Class A point of entry (POE) UV disinfection devices; and
 - (d) The system shall be maintained and monitored daily.
 2. Disinfectants shall be applied prior to the water storage tank or retention tank to obtain the contact time required for the specific disinfectant used.
 3. If chlorination is the means of disinfection, it shall conform to the following requirements:
 - (a) Sufficient chlorine shall be added to satisfy the demand; the chemical feed pump must be in operation when the well pump is on;
 - (b) There must be no bypass built into the disinfection system;
 - (c) There must be a minimum of 10 minutes of contact time before chlorinated water reaches the first customer or available tap;
 - (d) The Ct value (contact time multiplied by the free chlorine residual) for disinfection shall be four;
 - (e) The free chlorine residual entering the distribution system must be 0.2 to 0.7 milligrams per liter; and
 - (f) The dealer shall purchase a DPD method, free chlorine, low range (0 mg/l to 3.5 mg/l) chlorine test kit or appropriate testing equipment to determine the free chlorine in the water after continuous disinfection has occurred. A pool test kit is NOT acceptable.
 - (g) The dealer shall also sample, analyze and record the results of their own tests for chlorine daily. A copy of the chlorine records shall be kept on the premises for at least 2 years and shall be available for viewing by the Department in accordance with Chapter 15.29.
 - (h) Continuous disinfectant analyzers shall be connected to pump or flow controls and an alarm or automatic shutdown system such that when disinfectant falls below a pre-determined set point (e.g. minimum disinfectant residual to achieve Ct for a given time period), the water system will automatically shut down and the operator shall be immediately notified.
 4. If an ultraviolet light (UV) system is used as the primary means of disinfection it shall meet all of the requirements of the American National Standards Institute/National Science Foundation (ANSI/NSF) standard fifty-five for class A ultraviolet light treatment systems. An ultraviolet light system used as the primary means of disinfection shall also meet the following criteria:

(a) The water must not exceed the following parameters before application of UV disinfection:

Iron	0.3 mg/L
Manganese	0.05 mg/L
Hardness	300 mg/L
Turbidity	1 ntu
Color	15 APHA units
Suspended solids	10 mg/L

- (b) If treatment is needed to meet above parameters, UV treatment unit shall be installed after treatment for removal of above parameter(s).
- (c) An absolute filter size of one to five microns shall be installed prior to treatment of the water by the ultraviolet equipment.
- (d) The flow rate entering the UV system shall not exceed the maximum design flow rate specifications for the UV unit.
- (e) A solenoid switch must be installed so that the water supply shuts down when the lamps are not on.
- (f) Disinfection units shall be cleaned, serviced, and tested as frequently as necessary to maintain effective disinfection and in accordance with manufacturer's instructions. Records must be kept of these activities in accordance with Chapter 15.29.
- (g) The lamps shall be replaced at the specification of the manufacturer. Records must be kept of these activities in accordance with Chapter 15.29.

F. Ice Production

1. Any ice used in the processing, storage, or transport of shellstock or shucked shellfish shall:
 - (a) Be treated as food;
 - (b) Be manufactured at the certified facility from potable water in a commercial machine that has been installed in compliance with State and local plumbing code, or in another establishment approved by the Department;
 - (c) Be inspected upon receipt;
 - (d) Be stored so as not to come in contact with contaminated surfaces and shall be handled so that it will not be contaminated.
2. Equipment used to handle ice shall be kept clean and stored in a sanitary manner.

G. Shellstock Washing

1. Water from either a potable water supply or a growing area in the approved classification shall be used to wash shellstock.
 - (a) Depuration harvesters may use growing area water in the restricted or conditionally restricted classification in the open status to wash shellstock at the time and place of harvest.

2. If the dealer uses any system to wash shellstock which recirculates water:
 - (a) The dealer must have all plans for construction or remodeling of a recirculating shellstock washing system reviewed and approved by the Department prior to commencing operation.
 - (b) The dealer must provide a water treatment and disinfection system to treat an adequate quantity of water to a quality acceptable for shellstock washing which, after disinfection, meets the coliform standards for drinking water, and does not leave any unacceptable residues in the shellstock.
 - (c) The dealer must test bacteriological water quality daily.
 - (d) The dealer may use ultraviolet (UV) disinfection in the recirculating wash water system, provided that the turbidity of the water to be disinfected shall not exceed 20 nephelometric turbidity units (NTUs) measured using the method in the American Public Health Association (APHA) Standard Methods for the Examination of Water and Wastewater.
 - (e) Disinfection units shall be cleaned, serviced, and tested as frequently as necessary to maintain effective disinfection.
 - (f) Storage tanks and related plumbing shall be fabricated of safe materials and shall be easily cleanable.
 - (g) Tanks shall be constructed so as to be easily accessible for cleaning and inspection, to be self-draining, and to meet food contact surface requirements.
 - (h) Plumbing shall be designed and installed so that cleaning and sanitizing will be effective.
 - (i) Tanks shall be cleaned and sanitized on a regular schedule to prevent contamination of the tank and water.
3. Shellstock shall not be placed in containers of stagnant water.

16.08 Plumbing and Related Facilities

- A. The plumbing in a certified shellfish establishment shall comply with the State of Maine Plumbing Code. (02-395 CMR Chapter 238, State of Maine Internal Plumbing Rules)
- B. A satisfactory certificate of inspection from a State of Maine Certified Local Plumbing Inspector or local code enforcement officer is a prerequisite for certification of all new or added plumbing.
- C. All hose bibs, including hoses attached to faucets, must be equipped with a backflow/ backsiphonage prevention device.
- D. All hoses must be stored properly when not in use; i.e. off the floor or ground.
- E. Hand washing facilities shall be provided which are:
 1. Convenient to work areas and located so that use by plant personnel can be readily observed by the person responsible for supervision;
 2. Separate from the three compartment sinks used for cleaning equipment and utensils;
 3. Directly plumbed to an approved sewage disposal system; and

4. Provide with warm water at a minimum temperature of 110° F (43° C).
- F. The dealer shall provide at least one hand washing facility in the packing room for use by packing room workers unless determined otherwise by Department personnel.
- G. Each certified shellfish establishment must provide an adequate number of conveniently located toilet facilities in accordance with the Maine Plumbing Code. (02-395 CMR Chapter 238, State of Maine Internal Plumbing Rules)
- H. Toilet room doors shall be tight fitting, self-closing, and must not open directly into a processing area.
1. Toilet rooms shall be kept clean and in good repair.
 2. A supply of toilet tissue in a suitable holder shall be available in the toilet room.
 3. Ventilation shall meet state and municipal building code requirements.
 4. The hand wash sink in the toilet room shall not be substituted as a hand wash sink for other areas of the facility where the handling of shellfish or packaging materials occurs.
- I. Supplies of soap and single service hand towels, in suitable dispensers, as well as sanitary hand dips, shall be available near hand wash and toilet facilities. Other sanitary drying devices, if approved by the Department, are also acceptable.
1. Proper waste receptacles must be provided at each lavatory stand for disposal purposes.
 2. Hand wash and toilet facilities may not be used as storage areas of any kind.
 3. Hand washing signs that require workers to wash hands directly after using the toilet and following any work interruptions, in a language understood by the workers, shall be posted in toilet rooms and near hand wash facilities.
 4. The hand wash facility must be equipped with a mixing valve or combination faucet, and only be used for hand washing purposes.
 5. Hand wash facilities must be kept clean and in good repair.
- J. There shall not be any cross-connections between the approved pressurized water supply and water from a non-approved source.
1. There shall not be any fixtures or connections through which the approved pressurized water supply could be contaminated by backsiphonage.
 - (a) If booster pumps are connected directly to the potable water supply, the pumps shall be equipped with a low pressure cutoff device or an equivalent mechanism designed to prevent backsiphonage.
- K. Depuration tanks, processing containers, and piping shall be fabricated from non-toxic corrosion-resistant materials that are easily cleanable.
- L. Depuration tank design, hydraulics, and typical container configuration must be such that process water is evenly distributed throughout all the shellfish containers within a given tank; and

1. Shellfish containers must allow process water to flow freely and uniformly to all shellfish within each container.
- M. Depuration units, including depuration tanks, all reservoir tanks and related piping, shall be fabricated from safe materials, and the depuration unit construction must be such that it:
1. is easily accessible for cleaning and inspections;
 2. is self-draining; and
 3. meets the requirements for food contact surfaces.

16.09 Sewage

- A. Sewage and waste water from a certified shellfish establishment shall be discharged into public sewers wherever possible. (02-395 CMR Chapter 238, State of Maine Internal Plumbing Rules, Appendix F)
- B. Where private sewage disposal facilities must be utilized, their construction shall comply with the State of Maine Plumbing Code. (02-395 CMR Chapter 238, State of Maine Internal Plumbing Rules)
- C. All sewage and wastewater disposal facilities shall be constructed and maintained so that all wastes are inaccessible to flies and rodents.
- D. Blower and skimmer drains shall not be directly connected to sewer or other discharge lines, but shall be provided with an air gap.
- E. Refrigeration unit condensate pans shall be plumbed into the wastewater system in accordance with Maine State Plumbing Code. (02-395 CMR Chapter 238, State of Maine Internal Plumbing Rules)
- F. Adequate floor drainage, including backflow preventers such as air gaps, shall be provided where floors are:
 1. Used in shellstock storage;
 2. Used for food holding units (e.g. refrigeration units);
 3. Cleaned by hosing, flooding or similar methods; and
 4. Subject to discharge of water or other liquid waste.

16.10 Insect and Rodent Control Measures

- A. Insects, rodents and other vermin must not be present.
- B. The dealer shall employ such measures as are necessary to control internal and external insect and vermin including, but not limited to:
 1. Tight fitting, self-closing doors;
 2. Screening of not less than 15 mesh per inch; and
 3. Controlled air current.
- C. No domestic animals, fowl or pets shall be permitted in a shellfish processing plant.

16.11 Proper Labeling, Storage and Use of Toxic Materials

- A. No poisonous and toxic materials may be present in the plant, except those that are necessary for plant operation.
- B. Containers of poisonous or toxic materials shall be prominently labeled and used only in accordance with applicable federal and state laws and regulations.
- C. All such materials shall be safely stored and used only in accordance with the manufacturer's label directions.
- D. Each of the following categories of poisonous or toxic materials shall be separated from one another:
 - 1. Insecticides and rodenticides;
 - 2. Detergents, sanitizers and related cleaning agents; and
 - 3. Caustic acids, polishes and other chemicals.
 - 4. Poisonous or toxic substances shall not be stored above shellfish or food-contact surfaces.
 - 5. Poisonous or toxic substances shall be stored off the floor above the splash level of foot traffic.
- E. Test kits to determine strength of sanitizers shall be provided by the dealer.
- F. Sanitizing solutions other than chlorine shall not be used in the sanitizing of equipment or utensils unless the solution is approved by the Commissioner or specified in the Code of Federal Regulations, Title 21, 178.1010(36) as a safe solution for use.

16.12 Equipment Construction for Non-food Contact Surfaces

- A. The dealer shall use only equipment, including approved plastic ware, which is constructed in a manner and with materials that can be cleaned and maintained, repaired and/or replaced.
- B. The dealer shall use easily cleanable, corrosion - resistant, impervious materials, free from cracks to construct:
 - 1. Shucking benches and tables;
 - 2. Shucker's chairs or stools; and
 - 3. Any non-food contact surfaces in shellfish storage or handling areas including, but not limited to: Racks, pallets, etc.
- C. Shucking benches shall drain completely and rapidly, and shall drain away from any shellfish on the benches.
- D. Non - food contact equipment shall be maintained in good repair.
- E. Wood is not an acceptable construction material for non - food contact surfaces.
- F. Containers used for storing shellstock shall be fabricated from safe materials, cleaned and maintained in a manner and frequency as necessary to protect shellstock from contamination.

16.13 Cleaning of Non-Food Contact Surfaces

- A. Cleaning activities for equipment shall be conducted in a manner and at a frequency appropriate to prevent contamination of shellfish and food contact surfaces.
- B. All conveyances and equipment, which come into contact with stored shellstock shall be cleaned and maintained in a manner and at such frequency as necessary to protect shellstock contamination.

16.14 Condition and Cleanliness of Food Contact Surfaces

- A. Except for equipment in continuous use and placed in service prior to January 1, 1989, the dealer shall use only equipment, which conforms to the Shellfish Industry Equipment Construction Guides (August 1993), U.S. Department of Health and Human Services.
- B. The dealer shall use only equipment and utensils, including approved plastic ware and finished product containers, which are:
 - 1. Constructed in a manner and with materials that can be cleaned, sanitized, maintained or replaced in a manner to prevent contamination of shellfish products;
 - 2. Free from any exposed screws, bolts, or rivet heads;
 - 3. Fabricated from food grade materials; and
 - 4. Kept in good repair.
- C. All joints in construction of food contact surfaces shall be welded flush and have a smooth surface.
- D. The use of enameled material and glass in utensils and equipment is prohibited. Tin or galvanized material in the food contact zone is also prohibited.
- E. Shucking containers used for the shucking of soft-shelled clams must hold a volume of ½ gallon or less.
- F. Perforations in skimmers and colanders must be smooth to facilitate cleaning.
- G. All internal angles of food contact surfaces shall be filled or otherwise fabricated to facilitate cleaning.
- H. All tanks, tubs, and other containers used for storage of shucked shellfish shall be located so that the top rim of the container is at least two feet above the floor.
- I. Compressor intakes for blowers shall be located in a protected place, and equipped with an adequate and clean filter.
- J. All containers shall be constructed of nontoxic or impervious materials, which can be easily cleaned. The containers must be designed and constructed to ensure that the contents of the container will be protected from contamination during shipping and storage.
- K. All equipment used in heat shock/hot dip processing shall meet the requirements of Chapter 16.14 (A), (B) and (C).
- L. All equipment used to handle ice shall be kept clean and stored in a sanitary manner, and shall meet the construction requirements of Chapter 16.14 (A), (B) and (C).

16.15 Cleaning and Sanitizing of Food Contact Surfaces

- A. Food contact surfaces of equipment, utensils and containers shall be washed, rinsed and sanitized to prevent contamination of shellfish and other food contact surfaces.
- B. The dealer shall:
 - 1. Provide cleaning supplies and equipment;
 - 2. Provide three compartment sinks for equipment washing, and the sink compartments must be large enough to permit the complete immersion of the largest utensil to be sink-washed;
 - 3. Provide brushes, detergents and sanitizers, hot water and pressure hoses within the facility;
 - 4. Wash, rinse and sanitize equipment and utensils prior to the startup of each day's activities and following any interruption during which food contact surfaces may have been contaminated; and
 - 5. Wash, rinse and sanitize equipment within two hours after the day's operations have ceased.
 - (a) Equipment shall be air-dried.
- C. Shellfish shall be protected from contamination by washing, rinsing and sanitizing shucking containers before each filling.
- D. Containers which may have become contaminated during storage shall be washed, rinsed and sanitized prior to use or shall be discarded.
- E. Shucked shellfish shall be packed in clean containers.
- F. If used, finger cots or gloves shall be:
 - 1. Made of impermeable materials;
 - 2. Sanitized at least twice daily;
 - 3. cleaned more often, if necessary;
 - 4. Properly stored until used; and
 - 5. Maintained in a clean, intact and sanitary condition.

16.16 Prevention of Cross Contamination

- A. Shellstock shall be stored in a manner as to be protected from contamination.
- B. Shucked shellfish shall be protected from contamination.
- C. If equipment has been used for a species other than shellfish, it shall be washed, rinsed and sanitized prior to use for shellfish processing.
- D. Shellstock shall not be placed into water with any other marine organisms.
- E. Shellfish coolers shall not be used for storage of bait, other fish processing byproducts or refuse.

1. Only food grade product may be stored in the cooler physically separated from shellstock and shucked shellfish.
- F. Shellstock shall be stored in a protected location and at an adequate height off the floor to protect it from contamination from water accumulation on the floor or splash by foot traffic.
 - G. Employees working in both the shucking and packing activities must wash, rinse and sanitize their hands thoroughly when changing activities.
 - H. The dealer shall require all employees to wash, rinse and sanitize their hands thoroughly in a hand washing facility;
 1. before starting work;
 2. after each absence from the work station;
 3. After each work interruption; and
 4. Any time their hands may have become soiled or contaminated.
 - I. Employees handling shucked shellfish shall wear clean outer garments.
 - J. Employees shall take precautions to prevent contamination of shucked shellfish from microorganisms or foreign substances, including, but not limited to, perspiration, hair, cosmetics, chemicals and medicines.
 - L. In cases where an employee works in both the shucking and packing rooms, the employee shall put on a clean apron or other cover before entering the packing room.
 - K. No persons other than the employees of the shellfish establishment shall be permitted in the storage, shucking, and packaging portions of the plant.

16.17 Protection from Adulterants

- A. The dealer shall operate his facility to provide adequate protection from contamination and adulteration by excluding dirt and other filth from the facility.
- B. Shellstock shall be protected from contamination while being transferred from one point to another during handling and processing. Shellstock shall be stored in a manner as to be protected from contamination.
- C. A separate room outside the food processing area, packaging storage or shellstock/shellfish storage areas shall be provided for storage of employees' possessions, including street clothing, personal articles and breaks.
- D. Other manufacturing operations that could result in contamination of shellfish shall not be conducted in the same area where shellfish are being processed.
- E. Only materials and equipment routinely used in a specific processing activity shall be stored in the room in which the activity occurs.
- F. Sufficient space shall be provided to place equipment and to store materials in order to maintain sanitary operations and safe shellfish production.

- G. Fixtures, ducts and pipes shall not be suspended over food processing or storage areas or over areas in which containers or utensils are stored or washed.
- H. Aisles or working spaces between equipment, and between equipment and walls, must be unobstructed and sufficiently wide to permit employees to perform their duties without contaminating shellfish or food contact surfaces with clothing or personal contact.
- I. All lights, light fixtures, light bulbs, skylights, or other glass suspended over food storage or processing activities in areas where shellstock are shall be of a safety type or properly shielded to prevent broken glass from contaminating the shellfish product.
- J. Operation of cooling, heating or ventilating equipment must not create conditions that contaminate shellfish (by airborne contaminants) and shall minimize odors, vapors and condensation (including steam) in areas where shellfish is processed, stored or packed.
- K. When pesticides, rodenticides, cleaning compounds and sanitizers are used, the dealer shall apply them in accordance with applicable federal and state regulations and in such a manner to prevent the contamination of any shellfish, food contact surfaces or packaging materials with residues and must apply them in a way that does not constitute a hazard to employees.
- L. Shellfish coolers shall be constructed so they do not receive floor drainage from other portions of the plant.
- M. Shellfish storage areas shall not serve as an entryway to other areas of the facility.
- N. Shellfish shall be packed in clean containers.

16.18 Control of Employees with Adverse Health Conditions

- A. The dealer shall take reasonable precautions to assure that any employee with a disease in the communicable stage which might be transmissible through food shall be excluded from working in any capacity in which the employee may come in contact with the shellfish or with food contact surfaces.
 - 1. The diseases, which are transmissible from food workers, are those determined by the U.S. Centers for Disease Control and Prevention, in compliance with the Americans with Disabilities Act, and published in the Federal Register. The web site address for the Federal Register is http://www.archives.gov/federal_register/.
- B. If an employee with an infected wound keeps it covered with a proper bandage, an impermeable barrier, and a single - use glove for a hand lesion, the dealer may allow the employee to work in the shellfish processing facility without additional restrictions.

16.19 Personnel

- A. Employees shall not store clothing or other personal items, eat food or drink beverages, smoke, use tobacco in any form or spit in areas where shellfish are shucked, packed, stored or in areas used for washing equipment and utensils or where packaging is stored.
- B. Employees handling shucked shellfish shall wear effective hair restraints, including beard/moustache nets, and shall remove all insecure jewelry as well as any jewelry from hands that cannot be sanitized.

16.20 Supervision

- A. The holder of a shellfish certificate or his agent shall be responsible for the supervision of all activities in the shellfish facility.
- B. Supervision of all plant activities shall be provided during all hours of plant operation and shall be sufficient to ensure compliance with shellfish sanitation regulations.
- C. Lack of supervision and responsibility in an operating plant, including the non production of records required to be maintained, shall be grounds for immediate suspension of the certificate.
- D. Supervisors shall monitor employee hygiene practices including, but not limited to those items listed in Chapter 16, sections 15(F), 16 and 17.
- E. Supervisors shall be responsible for the implementation of proper sanitation practices, including:
 - 1. Plant and equipment clean - up;
 - 2. Rapid product handling; and
 - 3. Shellfish protection from contamination.
- F. Employees shall be:
 - 1. Instructed and trained in proper food handling practices;
 - 2. Instructed and trained in personal hygiene and sanitary practices; and
 - 3. Instructed to report any symptoms of illness to their supervisor.
- G. Supervisors shall receive appropriate training in proper food-handling techniques and food protection principles and shall be trained in personal hygiene and sanitary practices.
- H. Supervisors/managers must attend any sanitation workshops/seminars offered by the Department and must pass any examinations required.
- I. All unsanitary practices shall be brought to the employees' attention by the supervisors and the employees shall be instructed on the proper practice to be used.

16.21 Shellstock and Shucked Shellfish Storage and Handling

- A. The dealer shall inspect incoming shellstock and shall reject dead or inadequately protected shellstock.
- B. Shellstock shall:
 - 1. be reasonably free of broken shells;
 - 2. Gaping shellfish;
 - 3. Reasonably free of sediment; and
 - 4. Be packed and shipped in clean, new containers.

C. If a primary dealer chooses to commingle shellstock, the primary dealer shall apply to the Department annually for a permit to commingle during packing, repacking or shucking.

1. The written application must include:

(a) Name (as it appears on certificate), address, telephone number and certification number included as part of an application requesting a permit for commingling.

(b) A written standard operating procedure which includes:

(i) A detailed description of the proposed commingling plan;

(ii) How product is tagged or identified after commingling; and

(iii) How commingled product is recorded in purchase and sales records.

D. Only wholesome, live and unbroken shellstock fit for human consumption shall be shucked.

E. Shucking containers shall:

1. Be completely emptied at the packing room so that no overage is returned to the shucker; and

2. Washed, rinsed and sanitized after each use.

F. It is unlawful to use "dip buckets" in shucking shellfish or to use any container of water or other solution for the rinsing of hands or shucking knives.

G. The certified dealer shall not have on the premises any usable containers or container covers bearing a certification number different from the one issued for those premises unless documentation exists to verify the legitimate source of the containers and the containers carry shellfish from that source.

H. The dealer shall wash, blow and rinse all shellfish meats in accordance with 21 CFR 161 section 130 (April 1, 2002).

I. Shellfish shall be promptly shucked and packed in such a manner as to avoid contamination or exposure to any filth or impurities.

J. Once packed, shucked shellfish shall not be soaked or washed again, by the shucker/packer or any other person.

16.22 Shell and Waste Disposal

A. Shells and other waste materials shall be promptly and effectively removed from the shucking bench or table area to prevent interference with the sanitary operations of the shucking process.

B. Shell and waste materials shall be disposed of such as to minimize the development of odor and not to become an attractant, harborage, or breeding place for vermin, flies or other animals.

C. Shells and waste materials shall be disposed of in a manner that does not create a hazard for the contamination of food, food contact surfaces, ground surfaces, and water supplies.

D. Disposal of waste materials shall be conducted in accordance with appropriate federal and state laws and regulations. Also see the DEP Waste Discharge Program web site for more information at <http://www.state.me.us/dep/blwq/docstand/wastepage.htm>.

16.23. Conveyances Used by Dealers to Transport Shellstock

- A. For the purposes of this section, conveyance shall mean any type of container or unit used to transport shellfish. All conveyances used to transport shellstock or shucked shellfish, leased, owned or rented by the certified dealer shall be properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of the shellfish product.
 - 1. Shellstock or shucked shellfish shipped under conditions creating a potential for contamination, deterioration or decomposition, for example, with boat motors, engine oil, antifreeze, dead animals, dirty tarps, etc., shall be subject to immediate embargo and/or destruction as being of unsound or unknown quality, and therefore, unsafe for human consumption.
- B. The cargo area of conveyances used in the shipping or transport of shellstock or shucked shellfish shall be completely enclosed and constructed and maintained in the following manner:
 - 1. Smooth, easily cleanable, impervious and fully insulated;
 - 2. Doors shall close tightly;
 - 3. Shall have effective drainage;
 - 4. Kept clean with potable water and detergents, sanitizers, and other supplies for cleaning acceptable for use on food contact surfaces; and
 - 5. Shall be equipped with a functional calibrated thermometer.
 - 6. Conveyances must be inspected, and if approved, a decal applied by a state standardized inspector.
 - 7. All conveyance bodies must be labeled with the following information in 3" high letters, in a color contrasting with the application surface:
 - (a) Name of the dealer,
 - (b) The certification number of the dealer; i.e. ME ## SS.
 - 8. Cats, dogs, and other animals shall not be allowed in that part of the vehicle where shellfish is stored except patrol dogs when accompanying security or police officers.
- C. Shellstock and shucked shellfish shall be transported in refrigerated conveyances that maintain 45 °F (7.2 °C) or below when the shellstock have been previously refrigerated or the temperature inside the conveyance shall not exceed the ambient air temperature when the ambient air temperature is above 50° F (10° C).¹
 - 1. When mechanical refrigeration units are used, the units shall:
 - (a) be equipped with automatic controls; and
 - (b) Be maintained at an ambient air temperature necessary to comply with Chapter 16.23 (C) above.
 - 2. Any ice used to cool shellstock during transport shall meet the requirements of Chapter 16.16.

D. When shipping time is four hours or less, the dealer shall ship all shellfish:

1. Well iced; or
2. Refrigerated to maintain an ambient air temperature in the storage area of 45 °F (7.2 °C) or the temperature inside the conveyance shall not exceed the ambient air temperature when the ambient air temperature is above 50 °F (10 °C).
3. A time - temperature recording device is not required during shipment.
4. Lack of ice or refrigeration shall be considered an unsatisfactory shipping condition and the shellstock and/or shucked shellfish shall be subject to embargo under Chapter 16.23(A)(1).

E. When shipping time is greater than four hours:

1. The certified dealer shall ship all shellfish in a mechanically refrigerated conveyance which is equipped with automatic controls and maintain the ambient air in the storage area at 45° F (7.2 °C) or less; or
2. The temperature inside the conveyance shall not exceed the ambient air temperature when the ambient air temperature is above 50 °F (10 °C) and
3. The certified dealer shall provide a time - temperature recording device to accompany each shipment of shellfish.
4. The initial certified dealer shall note the date and time on the temperature indicating device.
5. If a time - temperature recording device is present, each receiving certified dealer shall write the date and time on the time - temperature record, when the shipment is received and the doors of the truck or the containers are opened.
6. The final receiving certified dealer shall keep the time - temperature recording chart in his/her files and shall make it available to the Department upon request.
7. Lack of ice or refrigeration, or an inoperative time - temperature recording device shall be considered as no recording device and the shellstock and/or shucked shellfish shall be subject to embargo under Chapter 16.23(A)(1).

F. Cargo Protection From Cross Contamination

1. Shellfish Cargo Only

- (a) The entire cargo shall consist of shellfish products only.
- (b) Except for bulk shipments, shellstock shipments shall be shipped on pallets.
- (c) If the conveyance does not have a channeled floor, pallets shall be used for all shellfish.

2. Mixed Cargos

- (a) Shellfish products must be protected from contamination by the other cargo;
- (b) All cargo must be placed on pallets; and

- (c) No other cargo may be placed on or above the shellfish unless all cargo is packed in sealed, crush resistant, waterproof containers.

16.24 Shellfish Harvester Vessels

A. Vessels

1. All harvester vessel operators must ensure that any vessel used to harvest, handle, transfer and/or transport shellstock is properly constructed, operated and maintained to prevent contamination, deterioration and decomposition of the shellstock.
2. Vessels and all other equipment coming into contact with shellstock during harvest, handling, transfer and/or transport shall be constructed in a manner and with materials that can be cleaned and maintained, repaired and/or replaced.
3. Decks or the floor of an open vessel upon which shellstock are placed, and any containers, shall be constructed and or located as to prevent bilge water or polluted overboard water from coming into contact with the shellstock.
4. Bilge pump discharges shall be located so that the discharge does not contaminate shellstock.
5. Boat decks and containers used in the harvest, handling, transfer and/or transport of shellstock for direct market shall be:
 - (a) Kept clean with water from a growing area in the approved classification or in the open status of the conditionally approved classification; and
 - (b) Provided with effective drainage.
6. When necessary, clean effective coverings shall be provided on harvest boats to protect against shellstock from including but not limited to exposure to sun, birds and other adverse conditions.
7. Cats, dogs and other animals shall not be allowed on vessels except for patrol dogs when accompanying security or police officers.

- B. Shellstock shall be received at a certified dealer within 18 hours of harvest in accordance with the time and temperature matrices defined in Chapter 15.02(A)(91).

C. Disposal of Human Sewage from Vessels

1. Human sewage must not be discharged overboard from a vessel used in the harvesting of shellstock while the vessels are in the growing area.
2. An approved marine sanitation device (MSD), portable toilet or other sewage disposal receptacle shall be provided on the vessel to contain human sewage.
3. Portable toilets must:
 - (a) Be required on all boats when the vessel is in use for over 6 hours to contain human sewage;
 - (b) Be used only for the purpose intended;
 - (c) Be secured while on board and located to prevent contamination of shellstock by spillage or leakage;

- (d) Be emptied only into a sewage disposal system;
 - (e) Be cleaned before being returned to the boat; and
 - (f) Not be cleaned with equipment used for washing or processing food.
4. Use of other receptacles for sewage disposal may be approved by the Department if the receptacles are:
- (a) Constructed of impervious, cleanable materials and have tight fitting lids; and
 - (b) Meet the requirements in Chapter 16.24(C)(3).
 - (c) Labeled clearly with "Sewage only" or equivalent language.

16.25 Shellfish Shipping Conditions

- A. The entire cargo shall be limited to compatible molluscan shellfish products. Mixed cargo, which may include other seafood's in boxes to the same or subsequent destination, is acceptable only if the compatible molluscan shellfish products are protected from contamination by the other cargo through partitioning, horizontal separation or other isolation methods. No other cargo may be placed on or above the shellfish unless all cargo is packed in sealed, crush resistant, waterproof containers.
- B. Shellstock shipments shall be palletized (except in bulk). Pallets shall be used when the conveyances do not have a channeled floor. Mixed cargoes of seafood, other than shellfish, shall be palletized.

16.26 Receiving Shellfish

- A. The dealer shall reject or discard any shellfish shipments which:
 - 1. do not originate from a licensed harvester or dealer; and/or
 - 2. are unwholesome, inadequately protected or whose source cannot be identified.
- B. Transportation agents or common carriers used by a dealer are not required to be certified.
- C. The dealer shall:
 - 1. Inspect incoming shellfish shipments to assure that the shipments are received under the conditions required in this Chapter
 - 2. Place shellstock under temperature control within 2 hours after receipt from the harvester, or when the dealer is also the harvester, when shellstock reaches the dealer's facility;
 - 3. Ensure that shellstock is not permitted to remain without ice, mechanical refrigeration, or other approved means of lowering and maintaining the internal body temperature of the shellstock to 50° Fahrenheit (10° Centigrade) or less for more than 2 hours at points of transfer such as loading docks;
 - 4. Ensure that shucked shellfish are not permitted to remain without ice, mechanical refrigeration, or other approved means of maintaining shellfish temperature at 45° Fahrenheit (7.2° Centigrade) or less; and
 - 5. Ensure that frozen shellfish remain frozen.
- D. For the purpose of this section, temperature control is defined as the management of the environmental temperature of the shellstock by means of ice, mechanical refrigeration or other means approved by the Authority.

16.27 Transportation Records

All shipments of shellstock shall be accompanied with documentation indicating the time of shipment and that all shipping conveyances comply with other requirements of this chapter. This documentation must include a notice of all shellstock properly harvested that has not been cooled to an internal temperature of 50° F (10° C) and indicate the presence of a time/temperature recording device.

Chapter 16.23 C. References the time between shellstock exposure, harvest and transport to the initial dealer. During the transportation of shellstock to the original dealer the temperature inside the conveyance cannot be any warmer than the outside temperature when the outside temperature is above 50 ° F. This means if the outside temperature is 70 ° F the shellstock cannot be placed in the trunk of a car that is 90 ° F.

Chapter 17 Shucker-Packer

17.01 Compliance

Each dealer shall comply with all shellfish laws and regulations relating to shellfish handling and sanitation, including, but not limited to, the requirements specified in Chapter 15, Chapter 16, and Chapter 18 that are appropriate to the plant and the food being processed.

17.02 Shucker-Packer

The holder of a shucker-packer certificate may harvest, pack, purchase, sell, store, hold, ship, or transport shellfish, whether in shellstock or shucked form. A shucker-packer may shuck shellfish and repack shucked shellfish obtained from other certificate holders.

17.03 Receiving Critical Control Point – Critical Limits

The shucker-packer shall shuck and pack only shellstock which is:

A. Obtained from a licensed harvester who has:

1. Harvested the shellstock from an approved or conditionally approved area in the open status as indicated by the tag; and
 2. identified the shellstock with a tag on each container or transaction record on each bulk shipment;
- Or

B. Obtained from a certified dealer who has identified the shellstock with a tag on each container.

17.04 Shellstock Storage Critical Control Point – Critical Limits

- A. If onshore wet storage is practiced; water quality must meet the requirements outlined in Chapter 15.32, 15.33 and 15.34;
- B. If nearshore wet storage is practiced, water quality must meet the requirements outlined in Chapter 15.32;
- C. Once placed under temperature control and until sale to the processor or final consumer, shellstock shall:
 1. Be iced; or

2. All shellstock obtained from a licensed harvester shall be placed and stored in a storage area or conveyance with mechanical refrigeration and maintained at 45°Fahrenheit (7.2°C) or less;
3. All shellstock intended for shucking must be shucked or cooled to an internal temperature of 50°F (10°C) or less within 10 hours; and
4. Not be permitted to remain without ice, mechanical refrigeration or other approved methods of refrigeration for more than 2 hours at points of processing or transfer such as loading docks.

17.05 Processing Critical Control Point - Critical Limits

- A. For shellstock which has not been refrigerated prior to shucking, the shucker-packer shall chill shucked meats to an internal temperature of 45° F (7.2° C) or less within 3 hours of shucking.
- B. For shellstock refrigerated prior to shucking, shucked meats shall be chilled to an internal temperature of 45° F (7.2° C) or less within four hours of removal from refrigeration.
- C. If heat shock/hot dip is used, once heat shocked/hot dipped shellstock is shucked, the shucked shellfish meats shall be cooled to 45° F (7.2° C) or less within two hours after the heat shock process.
- D. For repacking shucked shellfish, the shucked shellfish do not exceed an internal temperature of 45° F (7.2° C) for more than 2 hours.

17.06 Shucked Meat Storage Critical Control Point - Critical Limit

The shucker-packer shall store shucked and packed shellfish in covered containers off the floor and at an ambient air temperature in the storage area of 45° F (7.2° C) or less or adequately iced. In the event that shellfish have been frozen, the frozen shellfish shall be held at or below 0°F.

17.07 Heat Shock/Hot Dip Process

A shucker-packer may elect to use heat shock/hot dip to prepare shellstock for shucking.

A. The shucker-packer shall:

1. Post the schedule for the heat shock/hot dips process in a conspicuous location;
2. Make sure all responsible persons are familiar with the requirements; and
3. Cool all heat shocked/hot dipped shellstock immediately after the heat shock/hot dips process. This cooling shall be accomplished by:
 - (a) Dipping in an ice bath; or
 - (b) Use of flowing potable water.

B. If a heat shock water tank is used and the water is maintained at or above 140° F the shucker-packer shall completely drain and flush the tank at the end of the day's operation so that all the mud and debris, which have accumulated in the dip tank, are eliminated.

- (a) If the temperature is maintained below 140° F in the hot dip/heat shock tank, the dealer shall completely drain and flush the tank at three-hour intervals.

C. The heat shock/hot dip process shall not:

1. Change the physical or organoleptic properties of the species;
2. Kill the shellfish prior to shucking; or
3. Increase microbial deterioration of the shucked shellfish.

D. The heat shock process shall be conducted inside the certified facility.

Chapter 18 Shellstock Shipper

18.01 Compliance

Each dealer shall comply with all shellfish laws and regulations relating to shellfish handling and sanitation, including, but not limited to, the requirements specified in Chapter 15, Chapter 16 and Chapter 17 that are appropriate to the plant and the food being processed.

18.02 Shellstock Shipper

The holder of a shellstock shipper certificate may purchase, store, sell, pack, ship and transport shellstock. A shellstock shipper certificate holder may purchase and sell shucked shellfish obtained from a shucker-packer certificate holder, but shall not shuck shellfish or repack shucked shellfish. A shellstock shipper Shall have a facility for proper storage and/or repacking of shellstock, including a means of dry storage of shellfish, such as a walk-in cooler.

18.03 Receiving Critical Control Point - Critical Limits

The shellstock shipper may only ship or repack shellfish which is:

A. Obtained from a licensed harvester who has:

1. Harvested the shellstock from an approved or conditionally approved area in the open status as indicated by the tag; and
2. identified the shellstock with a tag on each container or transaction record on each bulk shipment;
Or
3. Harvested the shellstock in compliance with the time temperature requirements in Chapter 9 as determined from trip records supplied from the harvester to the initial dealer demonstrating compliance with time to temperature requirements

B. Obtained and transported from a certified dealer who has identified the shellfish with a tag or label on each container that has:

1. Adequately iced the shellstock; or
2. Placed the shellstock in a conveyance at or below 45°F (7.2°C) ambient air temperature; or
3. Cooled the shellstock to an internal temperature of 50° F (10° C) or less.

C. Should a dealer receive shellstock from a dealer who is shipping shellstock harvested in accordance with Chapter VIII Section 02 A (3) (Level 3 Average Monthly Maximum Air Temperature of >60 °F - 80 °F ((15 °C - 27 °C)) and Maximum Hours from Exposure to Temperature Control of 18 hours that has

not been cooled to an internal temperature of 50° (10° C) the shellstock must be accompanied with a time/temperature recording device indicating that continuing cooling has occurred. Shipments of four (4) hours or less will not be required to have a time/temperature device.

18.04 Shellstock Storage Critical Control Point - Critical Limits

A. The shellstock shipper shall ensure that:

1. If onshore wet storage is practiced, water quality meets the requirements outlined in Chapter 15.32, 15.33 and 15.34;
2. If nearshore wet storage is practiced, water quality meets the requirements outlined in Chapter 15.32;

B. Once placed under temperature control and until sale to the processor or final consumer, shellstock shall:

1. Be placed in a storage area or conveyance with mechanical refrigeration and maintained at 45° Fahrenheit (7.2 °Centigrade) or less;
2. Not be permitted to remain without ice for more than 2 hours at points of transfer such as loading docks.
3. All other shellstock obtained from a licensed harvester shall be cooled to an internal temperature of 50° F (10° C) within ten (10) hours of receipt.
4. Product intended for relay, wet storage, depuration or *Mercenaria sp* which is being cooled utilizing an approved tempering plan are exempt from the above requirement (B) (3).

18.06 Shucked Meat Storage Critical Control Point - Critical Limit

The shellstock shipper shall store shucked and packed shellfish in covered containers off the floor and at an ambient air temperature in the storage area of 45° F (7.2° C) or less, or adequately iced.

A. In the event that shellfish have been frozen, the frozen shellfish shall be held at or below 0° F.

B. Once placed under temperature control and until sale to the processor or final consumer, shucked shellfish shall be placed and stored in a storage area or conveyance with mechanical refrigeration or other approved methods of refrigeration and maintained at 45° F (7.2° C) or less.

18.07 Shellstock Shipping Critical Control Point

The dealer shall ensure that all shellstock is cooled to meet the requirements outlined in Chapter 18.04 (B) (3) above prior to shipment. Should the original dealer ship shellstock which has been harvested in accordance with Chapter VIII Section 02 A. 3. (Level 3 Average Monthly Maximum Air Temperature of >60 °F - 80 °F ((15 °C - 27 °C)) and Maximum Hours from Exposure to Temperature Control of 18 hours that has not been cooled to an internal temperature of 50° (10° C) prior to achieving the internal temperature of 50°F (10°C), the shipment shall be accompanied with a time/temperature recording device indicating continuing cooling. Shipments of four (4) hours or less will not be required to have a time/temperature recording device.

Chapter 19 Reshipper

19.01 Compliance

Each dealer shall comply with all shellfish laws and regulations relating to shellfish handling and sanitation, including, but not limited to, the requirements specified in Chapter 15 and Chapter 16 that are appropriate to the plant and the food being processed.

19.02 Shellfish Reshipper

The holder of a reshipper certificate may sell, ship or transport shucked shellfish or shellstock packed in their original containers, which have been purchased from certified shellfish dealers, to other certified dealers, retailers or to final consumers. A reshipper shall not shuck, repack, hold or store shucked shellfish or shellstock for sale, shipment or transport. A reshipper may not harvest shellfish or buy from harvesters.

19.03 Receiving critical control point - Critical limits

The reshipper shall reship only shellfish which:

- A. Originated and was transported from a certified dealer;
- B. Are identified with a tag or label in accordance with Chapter 15.
- C. Adequately iced the shellstock, or;
- D. Place the shellstock in a conveyance at or below 45°F (7.2°C) ambient air temperature; or
- E. Cool the shellstock to an internal temperature of 50°F (10°C) or less.
- F. Should a dealer receive shellstock from a dealer who is shipping shellstock harvested in accordance with Chapter VIII Section 02 A (3) (Level 3 Average Monthly Maximum Air Temperature of >60°F - 80°F ((15°C - 27°C)) and Maximum Hours from Exposure to Temperature Control of 18 hours from May 1st to September 30th and Level 2 Average Monthly Maximum Air Temperature of 50°F – 60 °F (10°C - 15°C) and Maximum Hours from Exposure to Temperature Control of 24 hours from October 1st to April 30th) that has not been cooled to an internal temperature of 50°F (10°C) the shellstock must be accompanied with a time/temperature recording device indicating that continuing cooling has occurred. Shipments of four (4) hours or less will not be required to have a time/temperature device.

19.04 Shellstock storage Critical Control Point - Critical Limits

The reshipper shall:

- A. Place shellstock in a storage area or conveyance with mechanical refrigeration and maintained at 45° F (7.2° C) or less or adequately iced; and
- B. Not permit shellstock to remain without ice, mechanical refrigeration or other approved methods of refrigeration for more than 2 hours at points of transfer such as loading docks.

19.05 Shucked Meat Storage critical control point - Critical limit

The reshipper shall maintain shucked shellfish in a storage area or conveyance with mechanical refrigeration or other approved methods of refrigeration at an ambient air temperature in the storage area of 45° F (7.2° C) or less. In the event that shellfish have been frozen, the frozen shellfish shall be held at or below 0° F.

19.06 Storage Facility

In the event that a reshipper certificate holder constructs or uses a permanent storage facility in the reshipping operation, he/she shall be considered a shellstock shipper, and must surrender the reshipper certificate to the Department and apply for a shellstock shipper's certificate.

19.07 Vehicle(s)

The facilities of a reshipping business shall be limited to a vehicle or vehicles. The vehicle(s) must meet all of the standards established for vehicle construction and thermal protection as set forth in Chapter 16.

Chapter 20: Depuration

20.01 Compliance

Each depuration processor must comply with the requirements specified in Chapter 15, Chapter 16, and Chapter 18 that is appropriate to the plant and the shellfish being processed.

20.02 Depuration

- A. The holder of a depuration certificate issued pursuant to 12 M.R.S.A. §6856 may cleanse shellfish harvested from approved, conditionally approved, restricted or conditionally restricted areas, using a physical plant and processing methods which are approved by the Commissioner and which comply with the requirements set forth in this chapter.
- B. The holder of a depuration certificate may purchase, receive or harvest shellstock from areas classified as approved, conditionally approved, restricted or conditionally restricted and submit such shellstock to an approved depuration process. The depuration processor may pack, sell, ship or transport the depurated shellstock. A depuration processor shall have a facility, including a means of refrigerated storage of shellfish, such as a walk – in cooler.

20.03 Receiving Critical Control Point - Critical Limits

The depuration processor may receive and depurate only shellstock, which is:

- A. Obtained from a licensed harvester who has:
 - 1. Harvested the shellstock from an approved or conditionally approved area in the open status as indicated by the tag; and
 - 2. identified the shellstock with a tag on each container or transaction record on each bulk shipment; or
- B. Originates from a certified dealer who has identified the shellstock with a tag on each container; or
- C. Obtained from an authorized representative in accordance with Chapter 20.07 who has:

1. Harvested or supervised the harvest of shellstock from a restricted or conditionally restricted area in the open status; and
2. Identified the shellstock by transaction records, which include the harvest area, the authorized representative's name, the licensed harvester name(s), harvester license number(s), the harvest date, and the amount of shellstock shipped in each lot.

20.04 Processing Critical Control Point - Critical Limits

The depuration processor must:

- A. Depurate all lots for a minimum of 44 hours.
- B. Monitor the water treatment system to assure that it is operating at design specifications.
- C. Monitor to ensure that the critical limits established during process verification are in compliance with the requirements of Chapter 20.11 and 20.12.

20.05 Shellstock Storage Critical Control Point - Critical Limits

The depuration processor must ensure that:

- A. If onshore wet storage is practiced, water quality meets the requirements outlined in Chapter 15.32, 15.33 and 15.34; and
- B. Once placed under temperature control and until sale to the processor or final consumer, the shellstock:
 1. Is placed in a storage area or conveyance with mechanical refrigeration and maintained at 45° Fahrenheit (7.2° Centigrade) or less or adequately iced; and
 2. Is not permitted to remain without ice or mechanical refrigeration or other approved methods of refrigeration for more than 2 hours at points processing or of transfer such as loading docks.
 3. Shall be cooled to an internal temperature of 50°F (10°C) or less within ten (10) hours of receipt.
 4. Should a dealer receive shellstock from a dealer who is shipping shellstock harvested in accordance with Chapter VIII Section 02 A (3) and Maximum Hours from Exposure to Temperature Control and has not been cooled to an internal temperature of 50° (10° C) the shellstock must be accompanied with a time/temperature recording device indicating that continuing cooling has occurred. Shipments of four (4) hours or less will not be required to have a time/temperature device.

20.06 Depuration Process Water

- A. Water from a prohibited growing area must not be used for source water.
- B. The depuration processor must:
 1. Continuously treat process water with a disinfection system that is approved by the Department and does not leave any unacceptable residue in the shellstock; and

2. Verify that the disinfection system produces process seawater with no detectable coliform organisms, as measured using an NSSP approved method, in the tank influent according to the following sampling protocols:
 - (a) If the source water is from an approved growing area, approved well, or other approved source, then the tank influent produced by each disinfection unit must be evaluated i.e., tested, once per process batch;
 - (b) If the source water is from a restricted growing area, then:
 - (i) A study meeting the requirements of Chapter 15.33(J) is required; and
 - (ii) The tank influent produced by each disinfection unit must be tested daily.

20.07 Harvest of Shellfish for Depuration

- A. Each depuration plant certificate holder must submit an application to the Department on an annual basis identifying the names and addresses of all individuals who the certificate holder intends to use as authorized representatives for the depuration plant in depuration harvesting operations. The Commissioner may refuse to authorize any person that he determines to be unsuitable to serve as an authorized representative, taking into account, among other things, whether that person has a record of having committed marine resource law violations.
- B. The authorized representative must supervise all members of the depuration harvesting crew and keep accurate records in accordance with Chapter 20.07(C) below.
- C. The authorized representative must record the names of all depuration harvest crewmembers and their current, valid, shellfish harvester's license number, during each day's operation. These records must be available for inspection by Department personnel at all times.
- D. The authorized representative must maintain daily records of the quantity of shellfish harvested by each member of the harvest crew and the area where the shellfish were harvested. These records must be available for inspection by Department personnel at all times.
- E. The depuration plant authorized representative must call the appropriate Maine State Police communications center to notify the local marine patrol officer of the area to be harvested at least 24 hours prior to actual harvesting.
- F. Harvesting in moderately contaminated areas for depuration purposes may be undertaken only during daylight hours, except during the months of November, December, January, and February when harvesting may be permitted until 8:00 P.M. in areas approved by the Department marine patrol officer. In the event that a marine patrol officer approves an area for nighttime harvesting, the authorized representative must notify the officer at least 12 hours in advance of the planned nighttime harvest. The Department will determine the number of areas approved for nighttime harvesting.
- G. During depuration harvesting activities, all harvest crew diggers must remain in the same area, close enough for immediate supervision of all diggers at all times by the authorized representative.
- H. Each member of a depuration harvesting crew must hold, and possess on his person, a current, valid commercial shellfish license, at all times during depuration harvest activities.

20.08 Transportation and Delivery of Shellfish for Depuration

All shellfish harvested from depuration areas must be placed into an approved vehicle and the vehicle must be sealed immediately. Unless otherwise authorized by Marine Patrol, all shellfish harvested must be transported directly to the depuration plant immediately after digging operations are completed.

- A. The vehicles must be sealed with state seals, issued by depuration plant managers. The authorized representative or the vehicle driver must record the seal number(s) on the daily harvest record.
- B. The authorized representative must maintain harvest records as required under Chapter 20.07(D), and must record the number of the seal on the vehicle and the time shellfish were placed in the vehicle. The plant manager must also maintain records of shellfish lots, listing each lot by seal number and listing the time the lot arrived at the plant and the time the seal was removed from the vehicle at the plant.
- C. The vehicle used must conform to the requirements set forth in Chapter 16.23.

20.09 State Seals

The Department will issue state seals for depuration harvesting purposes only to a depuration plant manager. It shall be unlawful for any person, other than a depuration plant manager or an authorized representative, to possess these seals. Unused seals must be submitted to the Department of Marine Resources upon cancellation or suspension of a shellfish certificate, or revocation or suspension of a certification to depurate.

20.10 Plant Operating Manual

- A. The depuration processor must prepare a written Depuration Plant Operations Manual (DPOM) meeting the minimum requirements described below. The DPOM must be updated as needed. A copy of the DPOM must be kept in a location readily accessible to the trained personnel responsible for the depuration activity. The minimum requirements for a DPOM must include:
 - 1. An introduction, including;
 - (a) The status of document (to create, revise or update DPOM);
 - (b) Ownership and principal(s) involved with operation of facility;
 - (c) The address and phone number of owner(s) and principal(s); and
 - (d) A summary of proposed use of the depuration facility including statement of objectives of the operation of the plant, species to be processed, proposed periods of facility operation, proposed sources of shellfish, including potential harvest areas, and maximum capacity of plant.
 - 2. A description of facility, including:
 - (a) Site plan drawing(s);
 - (b) Facility layout, including detailed schematic of the entire depuration system;
 - (c) A schematic drawing of the depuration process;
 - (d) A product flow diagram showing product movement through the facility;

- (e) A statement that construction materials and fabrication will meet the requirements of Chapter 16.12; and
 - (f) A schematic of the seawater delivery, treatment and distribution system(s).
3. Design specifications of the Depuration Unit including;
 - (a) Diagram of the depuration tank(s), including tank dimensions and construction details, influent and effluent locations, operating water level, and typical container configuration;
 - (b) A description of the process water system, including type of system (flow through or recirculating), pretreatment and filtration systems, disinfection system, and hydraulic schematic;
 - (c) Shellfish containers construction and material meeting the requirements of Chapter 16.08 and 16.14; and
 - (d) A list of all equipment, including washing, culling, and packing equipment, material handling equipment, and cleaning and sanitizing equipment.
 4. The laboratory to be utilized for microbial analyses (in house, government agency, private commercial);
 5. Depuration process monitoring, including;
 - (a) Sampling protocols, including frequency of sampling, number of samples, sampling locations, and methodology for process water analyzing, incoming shellstock and depurated shellstock;
 - (b) Monitoring equipment maintenance and calibration procedures and copies of activity log forms that will be used for data entry;
 - (c) Process water monitoring protocol for physical and chemical parameters; and
 - (d) Data analysis and evaluation.
 6. Standard Operating Procedures for:
 - (a) Receiving and holding;
 - (b) Washing, culling, and placement of undepurated product in process tanks;
 - (c) Depuration unit operation;
 - (d) Monitoring of depuration unit operation;
 - (e) Removal of depurated product from process tanks;
 - (f) Storage parameters and procedures;
 - (g) Labeling/tagging procedures;
 - (h) Plant cleaning and sanitation;
 - (i) Data analysis; and

- (j) Recall procedures.
- 7. Copies of proposed forms to be used for record keeping and a list of the categories of information that will be recorded, including;
 - (a) Shipping and receiving records;
 - (b) Plant Operation Log, including provisions for recording the values for chemical and physical parameters;
 - (c) Maintenance and Sanitation Log(s); and
 - (d) Laboratory records.

20.11 Process Verification

- A. The depuration processor must continuously perform process verification according to the following protocol:
 - 1. Following completion of a minimum of 44 hours of depuration, at least one end-product sample from each lot of shellstock to be depurated in the depuration unit must be collected and assayed.
 - 2. The depuration performance indices, defined as the geometric mean and 90th percentile of fecal coliform (FC) from assay data of the most recent ten (10) consecutive harvest lots for each species depurated and for each restricted harvest area used, must be determined daily, or as soon as results become available.
 - 3. The depuration performance indices, with the following Critical Limits for the Indices of Depuration Plant Performance table below, must be compared daily, or as soon as results become available:

Limits for Verification of Depuration Plant Performance
Fecal Coliform per 100 grams

Species	Geometric Mean	90 th Percentile
Soft Clams (<i>Mya arenaria</i>)	50	130
Hard Clams (<i>Mercenaria mercenaria</i>)	20	70
Oysters	20	70
Manilla Clams	20	70
Mussels	20	70

- 4. If the depuration performance indices for a specific species from a specific growing area are less than or equal to the above Critical Limits for the Indices of Depuration Plant Performance, then the process is considered verified for that species from that growing area.

20.12 Conditional Protocol Verification

- A. If the depuration performance indices for a specific growing area fail to meet the Critical Limits for the Indices of Depuration Plant Performance, or if a new restricted growing area is used as a source of shellfish for depuration, or if a new depuration process has generated less than 10 process batches of data, the process is considered to be unverified and the depuration processor shall adhere to the following conditional protocols:

1. The depuration processor shall collect and assay at least one zero hour and three end-product samples from each harvest lot;
2. Environmental parameters, including process water temperature, salinity, dissolved oxygen, and turbidity and other operational conditions that may inhibit the physiological process, must be identified. These condition(s), once identified and quantified, become critical control points (CCP) for specific species in the specific plant and the hazard analysis and HACCP plan must be revised accordingly.
3. Shellstock which are processed during this conditional protocol must meet the following release criteria before they may be released to market:
 - (a) The geometric mean (from three samples) of soft shelled clams does not exceed 110 and no single sample exceeds 170; or
 - (b) The geometric mean (from three samples) of other clam species, mussels, or oysters does not exceed 45 and no single sample exceeds 100.
4. If the harvest lot fails to meet the release criteria, the depuration processor may choose to subject the product to additional depuration processing, after which the shellfish may be resampled for compliance with the release criteria. Otherwise, the disposition of the shellfish shall be as follows:
 - (a) The Department, in consultation with the depuration processor, may order the destruction of the shellfish;
 - (b) The Department, in consultation with the depuration processor, may allow non-food use of the shellfish; or
 - (c) The Department, in consultation with the depuration processor, may allow the shellfish to be relayed in accordance with Chapters 21 and 22.
5. When depuration units with multiple tanks are used it is necessary to determine whether the individual tanks are similar.
 - (a) Tanks are considered similar if the difference between physical tank dimensions and process water flow rate is less than 10%.
 - (b) If the tanks are not similar, then the process verification protocols contained in Chapter 20.11 must be employed for each tank.
6. All microbiological assays of end-point samples must be analyzed by a laboratory which has been evaluated and approved pursuant to the requirements in the NSSP Guide for the Control of Molluscan Shellfish, Revision 1999, Chapter III, using an NSSP approved method.
7. Sample size must consist of a pool of at least 12 shellfish selected at random from each designated container (more than 12 individuals may be required in the case of smaller shellfish).
8. Samples must be collected at locations within the depuration unit that are considered to be most compromised with respect to the shellfish activity, based on the sampling plan contained in the DPOM.

20.13 Records

- A. Each depuration certificate holder must maintain the following records, in addition to those described in Chapters 15.24, 15.25, 15.29, 15.30:
 - 1. Daily dig records as required by Chapter 20.07(D);
 - 2. Daily sales records as required by regulations promulgated under 12 M.R.S.A., §6856, and numbers of bushels received, sold and held in process tanks.
 - 3. All quality assurance records required must be maintained for at least two years.
- B. Records must be maintained at the plant and be available for inspection by department personnel.

Chapter 21 Relaying

21.01 Compliance

- A. It shall be unlawful for any person to relay shellfish without a permit issued by the Commissioner.
- B. Relay activities may be permitted only from growing areas classified as conditionally approved in the closed status, restricted, or conditionally restricted in the open status except for the relay of seed, as described in 2.95(A)(4) which does not require a permit. The relay of seed as described in Chapter 2.90(3)(C)(3) will not require a permit provided the seed is held in an area classified as approved or conditionally approved in the open status for a minimum of 6 months.
- C. The holder of a permit may only reduce bacterial levels of shellfish. A permit under this section shall not allow for the relaying of diseased shellfish or shellfish contaminated with any poisonous or deleterious substances.
- D. The relay operation shall be effectively supervised by the Department or other state authorized relay supervisor to assure that all the shellstock are actually relayed to harvest areas in the approved classification or in the open status of the conditionally approved classification to be sufficiently cleansed. Relay control procedures shall preclude any opportunity for shellstock to be inadvertently diverted to sale for human consumption before the natural cleansing process is completed. Controls must be applied to all phases of the operation including initial harvesting, transportation, replanting, the security of the shellstock during the cleansing period, and final harvesting for marketing.

Exception: Supervision of final harvesting for market will not be required when all the product on the relay site has been tested and released by the Commissioner.

- E. Any violation of this regulation and/or the terms of a permit or any other shellfish sanitation law may result in the suspension of the permit in accordance with 12 M.R.S.A. § 6373. Additional conditions may be added to a permit at the discretion of the Commissioner.

21.02 Definitions

- A. In addition to the definitions set forth in 1 M.R.S.A. §§71 and 72 and 12 M.R.S.A. §6001, the following definitions shall apply in interpretation of Chapter 21.
 - 1. "Classification of Growing Areas" means that the growing area has been subjected to a sanitary survey and shall be classified based on the twelve year sanitary survey, and its most recent triennial or annual reevaluation when available, as any one or combination of the following:

- (a) Approved;
- (b) Conditionally approved;
- (c) Restricted;
- (d) Conditionally Restricted;
- (e) Prohibited.

Growing areas not subjected to a sanitary survey every twelve years shall be classified as prohibited. Growing areas which do not have a completed written triennial reevaluation report shall be placed in the closed status immediately.

2. "Conditionally approved" means a classification used to identify a growing area, which meets the criteria for the approved classification except under certain conditions described in a management plan. (Chapter 15.02(A)(16))
3. "Conditionally restricted" means a classification used to identify a growing area, which meets the criteria for the restricted classification except under certain conditions described in a management plan. (Chapter 15.02(A)(17))
4. "Container" means any bag, sack, tote, conveyance or other receptacle used for containing shellfish for holding or transporting.
5. "Growing area" means any site, which supports or could support the propagation of shellstock by natural or artificial means. (Chapter 15.02(A)(36))
6. "Relay Lots" means shellstock harvested from a defined, permitted area over a defined, permitted time period and delivered to the relay site. Also the same shellstock following completion of the relay treatment.
7. "Poisonous or deleterious substance" means a toxic substance occurring naturally or added to the environment for which a regulatory tolerance limit or action level has been established in shellfish to protect public health. (Chapter 15.02(A)(62))
8. "Prohibited" means a classification used to identify a growing area where the harvest of shellstock for any purpose, except depletion or gathering of seed for aquaculture, is not permitted. (Chapter 15.02(A)(70))
9. "Relay" means to transfer shellstock from a growing area classified as restricted, conditionally restricted, or conditionally approved in the closed status, to a growing area classified as approved or conditionally approved for the purpose of reducing pathogens as measured by the coliform indicator group or poisonous or deleterious substances that may be present in the shellstock by using the ambient environment as the treatment process.
10. "Relay Area" means an area designated by the Department for the purpose of natural biological cleansing of shellfish.
11. "Restricted" means a classification used to identify a growing area where harvesting shall be by special license and the shellstock, following harvest, is subjected to a suitable and effective treatment process through relaying or depuration. (Chapter 15.02(A)(75))
12. "Shellfish" means all species of:
 - (a) Clams, mussels, quahogs and oysters, whether:

- (1) Shucked or in the shell;
- (2) Fresh or frozen; and
- (3) Whole or in part.

(b) Scallops in any form, except when the final product form is the adductor muscle only. (Chapter 15.02(A)(81))

- 13. "Shellstock" means live molluscan shellfish in the shell; and shellfish which have not been removed from their shells (12 MRSA §6001(42)).
- 14. "State Authorized Relay Supervisor" means a DMR staff member or an individual who has been trained and authorized by the DMR to oversee relay operations. The state authorized relay supervisor may be a local or state official or third party contractor, but must not be a direct employee of the permit holder, a licensed harvester, or a member of the families of the permit holder or the managers of the relay operation

21.03 Application for Relay Permit

- A. Relay permit applications will be reviewed and issued based on the applicant's ability to meet the criteria for safe relay operations and the availability of a state authorized relay supervisor for each relay harvest.
- B. Persons may apply in writing to the Department for a permit to relay.

<http://www.maine.gov/dmr/healthsafety.htm>

Contact Information, unless otherwise noted, means the Department of Marine Resources (DMR), Director of Public Health, P.O. Box 8, West Boothbay Harbor, Maine 04575-0008; telephone: (207) 633-9500; fax: (207) 633-9579.

- C. The written application must include:

- 1. The name, address, telephone number, fax or email address of the applicant.
- 2. A map indicating the exact location (including GPS coordinates) of the growing area in the conditionally approved in the closed status, restricted, or conditionally restricted in the open status classification from which relaying is to take place.
- 3. A map indicating the exact location (including GPS coordinates) of the relay area.
- 4. A description of the relay activities to take place which will include:
 - (a) an approximate amount and the species of shellfish to be harvested;
 - (b) the projected time period during which the relaying may occur; and
 - (c) when container relaying is used, the system of container identification necessary to locate and avoid re-harvesting of shellfish from containers that have not been left in place long enough for sufficient cleansing.
- 5. The name, phone number and address of a proposed third-party representative to supervise the relay operation, or a request for DMR personnel to supervise the operation.

21.04 Harvesting

- A. A state authorized relay supervisor(s) shall be designated.
- B. The state authorized relay supervisor must monitor the activities of the relay operation and keep accurate records in accordance with Chapter 21.04 (D). During relay activities, all harvest crew members must remain in the same area. The authorized relay supervisor shall be present when product is moved to the relay site.
- C. The state authorized relay supervisor must maintain a relay activity log on forms supplied by the Department which includes, but is not limited to, the date of relay, area harvested, number of harvesters, names of all relay harvest crewmembers and their valid shellfish harvester's license number, the quantity of shellfish relayed, whether it is broadcast or container relay (number of containers) and if transported, the number of the seal used to lock the truck. One copy must go with the vehicle, one copy must be maintained by the relay permit holder and one copy is maintained by the Department. The records must be kept for 2 years.
 - 1. All harvesters shall hold valid shellfish licenses as specified in 12 M.R.S.A. §6601.
 - 2. Any harvesting violation may nullify and void the permit.
 - 3. Once a permit is issued, the permit holder must notify the local Marine Patrol Division Office no less than 24 hours prior to the commencement of harvesting. Any change in harvesting plans must be preceded by a minimum of 12 hours notice given to the Marine Patrol during normal business hours the preceding day.
- D. A state authorized relay supervisor is not required if an alternative monitoring mechanism is approved by the DMR.
- E. In the case of shellfish to be relayed interstate, a memorandum of understanding (MOU) shall be developed between the participating state shellfish control agencies regarding the particular control measures.

21.05 Relay Area and Procedures

- A. Relay areas shall meet the following design, operating and marking requirements:
 - 1. Waters to which shellfish have been relayed must have an average daily temperature $\geq 50^{\circ}\text{F}$. Relayed shellfish shall remain in the relay area at temperatures $\geq 50^{\circ}\text{F}$ for a period for not less than 14 days from the time the last shellfish are relayed, except as described in Chapter 21.05(B).
 - 2. The relay area shall be no closer than 10 meters (32.8 feet) from harvestable shellfish resources. Relayed shellfish that are broadcast on the bottom (no containers) shall be placed in accordance with permit conditions designed to avoid movement of contaminated product out of the relay area.
 - 3. Growing areas with relayed shellstock that are broadcast on the bottom (no containers) shall remain in the closed status until all relayed lots are authorized by the Commissioner for release.
 - 4. If shellstock are relayed in containers:
 - (a) The containers shall be designed and constructed so that they allow free flow of water to the shellstock;

(b) The containers shall be located so as to assure the contaminant reduction required in Chapter 21.05(B)(1) are met; and

(c) The shellstock must be washed and culled prior to placement in the containers.

5. Relay areas shall be marked at a minimum of four (4) corners with a device per corner which displays the permit number in letters and numbers of at least 2 inches in height in colors contrasting to the background color of the device. The perimeters of the surfaces of the device shall be marked by reflective tape. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the relay area. In situations where the topography or distance of the boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight. Should these marking requirements be impractical or insufficient the Commissioner may set forth alternative marking requirements on a case by case basis in the conditions of the relay permit.
6. Relay areas must be marked in accordance with the United States Coast Guard's Aids to Private Navigation standards and requirements.

B. Treatment procedures

1. The relay treatment time period shall be at least 14 consecutive days when environmental conditions are suitable for shellfish feeding and cleansing. Shorter time periods may be permitted at some locations or during some periods of the year if there is an adequate study to support the reduced time frame and there is intensive monitoring during the process. Longer periods may be required if environmental conditions are not optimum.
2. When container relaying is used and the Department allows a treatment time of less than 14 days, the Commissioner shall require more intensive sampling including:
 - (a) Product sampling before and after relay, and
 - (b) Monitoring of critical environmental parameters such as temperature and salinity.
3. Relay testing may be eliminated if the treatment period exceeds 60 days.

- C. The lease, LPA or site that lots are relayed to will be closed by regulation pursuant to Chapter 95 and 96. Treatment timing begins when permit conditions are met, including marking.

21.06 Product Sampling and Release

- A. The entire amount of relayed shellfish constitutes a lot. A harvest lot is all of the shellfish harvested from a particular area at a particular time.
- B. One shellstock and one water sample will be collected from each lot on the zero hour harvest day. One shellstock sample and one water sample will be collected from the relay site at the end of the treatment time to determine the effectiveness of the relay process. The final sample must be acceptable in order to release for market.

An acceptable sample is one which contains less than or equal to 230 Most Probable Number (MPN) fecal coliform per 100 grams of shellfish meat.

- C. Relayed shellfish shall not be released from a relay area without written permission from the Commissioner and the area must be open by regulations pursuant to Chapter 95 and 96.

21.07 Transportation and Delivery of Shellfish for Relay

All shellfish harvested for the purposes of relay, which are to be transported over land, must be placed into a vehicle that conforms to the requirements of Chapter 16.23 and the vehicle must be sealed immediately by the state authorized relay supervisor. Unless otherwise authorized by the Department, all shellfish harvested must be transported directly to the relay site immediately after harvesting operations are completed.

- A. The vehicles must be sealed with state seals issued by the Department. The state authorized relay supervisor must record the seal number on the relay activity log and the time the shellfish were placed in the vehicle.
- B. The seal can only be removed under the direct supervision of a state authorized relay supervisor. When the seal is removed, the number must be confirmed and signed and dated on the relay activity log. The relay activity log must contain a record of each lot of shellfish; amount, seal number associated with the lot, the time/date the lot arrived at the relay site and the time the seal was removed from the vehicle at the site. If the seal number is not confirmed or there is evidence of tampering, the marine patrol must be notified immediately.

21.08 State Seals

It shall be unlawful for any person, other than a state authorized relay supervisor or a Maine Marine Patrol Officer to possess state seals. It is unlawful for any person to break the state seal except for a Maine Marine Patrol officer or a state authorized relay supervisor.

21.09 Record Keeping

Relay and sales records shall be maintained by each relay permit holder and must meet the following criteria:

- 1. Each permit holder shall have a business address at which records are maintained
- 2. Records shall:
 - (a) Be complete, accurate and legible;
 - (b) Contain all of the Department's required information in a form authorized by the Department; and
- 3. The records must be sufficient to document;
 - (a) Specific dates on which the shellstock is harvested, deposited for treatment and harvested again;
 - (b) A container of shellfish so that the container can be traced back to the specific relay lot of shellfish from which it was taken; and
 - (c) Identify the buyer and quantity of shellstock purchased
- 4. Records shall be maintained in a permanently bound ledger book or other recording method approved by the Department, and shall be available for Department inspection upon request.
- 5. The records shall be retained for a minimum of two (2) years.

Chapter 22 – Retail Shellfish

22.01 Enhanced Retail Seafood license holders - compliance

- A. Commingling of shellstock is prohibited.
- B. Enhanced Retail Seafood license holders may not conduct wet storage activities. Wet storage of shellstock is prohibited, except by certified dealers pursuant to a current permit issued by the Department in accordance with Chapter 15.
- C. Shellstock received by an enhanced retail seafood license holder shall be tagged with the harvester tag pursuant to Chapter 9.06 or certified dealer's tag pursuant to Chapter 15.18. All tags shall be maintained on file for 90 days and shall be kept in chronological order correlated to the date when, or dates during which the shellstock were sold or served, pursuant to the Maine Food Code 3-203.12 (Shellstock, Maintaining Identification). For reference, the Maine Food Code, 10-144 CMR Chapter 200 is available on the web at: <http://www.maine.gov/sos/cec/rules/10/144/144c200.doc>.
- D. For purposes of this chapter the definitions in Chapter 15 shall apply.
- E. Activities are limited to retail sales only from the enhanced seafood license holder's fixed facility. Interstate commerce is prohibited in accordance with 12 M.R.S. §6601 sub-§2.
- F. All enhanced retail seafood license holders will be inspected prior to license issuance and on a random basis.
- G. An enhanced retail seafood license holder's establishment shall have a potable water supply from an approved source that meets the standards of Chapter 5 of the Maine Food Code (Water, Plumbing and Waste).

22.02 Receiving Shellfish

- A. The enhanced retail seafood license holder shall reject or discard any shellfish which:
 - 1. Do not originate from a licensed harvester or dealer; and/or
 - 2. Are unwholesome, inadequately protected or whose source cannot be identified.
- B. The enhanced retail seafood license holder shall:
 - 1. Place shellstock under temperature control, 41°F or less, within 2 hours after receipt from the harvester.
 - 2. For the purpose of this section, temperature control is defined in accordance with Maine Food Code, Chapter 200, §3-202.11 (Specifications for Receiving, Temperature).

22.03 Prevention of Cross Contamination

- A. Shellstock shall be stored in a manner as to be protected from contamination.
- B. If equipment has been used for a species other than shellfish it shall be washed, rinsed and sanitized prior to use for shellstock.
- C. Shellstock shall not be placed into water.

- D. Shellstock coolers shall not be used for storage of bait, other fish processing byproducts or refuse.
 - 1. Only food grade product may be stored in the cooler physically separated from shellstock and shellfish.
- E. Shellstock shall be stored in a protected location and at an adequate height off the floor to protect it from contamination from water accumulation on the floor or splash by foot traffic.
- F. The enhanced retail seafood license holder shall require all employees to wash, rinse and sanitize their hands thoroughly in a hand washing facility;
 - 1. before starting work;
 - 2. after each absence from the work station;
 - 3. After each work interruption; and
 - 4. Any time their hands may have become soiled or contaminated.
- G. No unauthorized personnel shall be allowed to handle shellstock. The employee shall wear a clean apron or other clean outer garments when handling shellstock.

22.04 Records

- A. Each enhanced retail seafood license holder must maintain records pertaining to all shellfish purchases and shellfish shipments received. These records must be made available to the Department upon request and must comply with the following criteria:
 - 1. Each enhanced retail seafood license holder shall have a business address at which records are maintained.
 - 2. Records shall:
 - (a) Be complete, accurate and legible;
 - (b) Contain all of the Department's required information in a form authorized by the Department; and
 - 3. The records must be sufficient to:
 - (a) Document that the shellstock was obtained from an authorized source (licensed harvester or certified dealer);
 - (b) Allow each container of shellstock to be traced back to the specific incoming lot of shellstock from which it was taken; and
 - (c) Allow for each lot of shellstock to be traced back to the growing area, date of harvest, and if possible, the harvester or group of harvesters.
 - 4. Records shall be maintained in a permanently bound ledger book or other recording method approved by the Department.
 - 5. The records shall be retained:

- (a) For a minimum of one year for fresh shellstock and for a minimum of two years for frozen shellstock.

C. Shellfish Reports: See Chapter 8.10(A) Landings Program; a no-cost Primary Buyers Permit is required.

22.05 Suspension , Revocation or Refusal to Reissue an Enhanced Retail Seafood License

A. Suspension or Revocation

1. The Commissioner may apply to the District Court for suspension of an enhanced retail seafood license where the holder has refused to allow a shellfish inspection or has violated a shellfish sanitation regulation. As provided by 12 M.R.S. §6373, the Commissioner may apply for suspension in a summary action before the district court pursuant to the provisions of 4 M.R.S. §184.
2. The Commissioner may suspend an enhanced retail seafood license under 12 M.R.S. §6401 where the holder has been convicted of a violation of a marine resources law. The Commissioner shall follow the procedures set forth in 12 M.R.S. §§6351 to 6353 to impose such a suspension.

B. When the Department determines that a condition exists that presents an immediate threat to public health the Department may take any or all of the following actions to protect the public health:

1. Suspend the enhanced retail seafood license in accordance with 5 M.R.S. §10004 (3 & 4);
2. Require the holder of the enhanced retail seafood license to initiate a recall consistent with the procedures in Chapter 15.36, of any distributed shellfish or shellstock that are adulterated or may have become adulterated; and
3. Embargo and destroy any undistributed lots of shellstock that are adulterated or may have become adulterated consistent with the provisions of Chapter 15.23.

C. If the Commissioner determines that an applicant for renewal of an enhanced retail seafood license is not currently in compliance with shellfish sanitation regulations, or has failed to comply with shellfish sanitation regulations during the previous license period, the Commissioner may refuse renewal of the license in accordance with the following procedures:

1. The Commissioner shall advise the applicant for renewal by certified mail, return receipt requested, of the refusal and the grounds for this refusal.
2. The Commissioner shall advise the applicant for renewal that the applicant has a right to request that an adjudicatory hearing be held before the Department in conformity with 5 M.R.S., Chapter 375 subchapter IV. The Commissioner shall advise the applicant that the hearing must be requested in writing and that the written request must be received by the Department no later than 10 days of receipt by the applicant of the notice, by certified mail, of refusal to renew the enhanced retail seafood license.
3. If an adjudicatory hearing is requested, the Commissioner shall schedule a hearing within 10 days of the Department's receipt of the written request for hearing, unless a longer period is mutually agreed to in writing.
4. Notice of the hearing date, time and location shall be given immediately to the applicant.

Chapter 23 - Standards for Closure of Contaminated or Polluted Flats

SUMMARY: This rule provides standards for assessing water quality and shellfish meat to determine whether shellfish are or may become contaminated or polluted requiring closure of affected flats to protect the public health and safety. Standards govern closures for bacterial pollution or contamination as well as designation of depuration digging areas.

23.01 Definitions.

- A. Coliform bacteria. The total coliform bacteria group includes all of the aerobic and facultative anaerobic, Gram-negative, non-sporeforming bacilli which ferment lactose with gas formation within 48 hours at 35°C. Bacteria from this group which will produce gas from lactose in a suitable multiple tube procedure liquid medium (EC or A-1) within 24 ± 2 hours at 44.5 ± 0.2 °C in a water bath will be referred to as fecal coliform bacteria. These definitions shall not preclude or invalidate the use of other estimates of coliform and fecal coliform bacteria approved by the National Shellfish Sanitation Program.
- B. Most probable number (abbreviated MPN). The MPN is a statistical estimate of the number of bacteria per unit volume.
- C. Sanitary survey. The evaluation of all actual and potential pollution sources and environmental factors having a bearing on shellfish growing area water quality.
- D. Shellfish growing area. An area which supports or could support live shellfish.

23.10 Closure of Polluted Areas.

An area shall be closed to the harvest of shellfish immediately if one or more of the following conditions exist:

- A. If a sanitary survey reveals that during the most unfavorable hydrographic and pollution conditions water samples taken from the area exhibit geometric means exceeding 70 MPN of total coliform bacteria and/or exceed 14 MPN fecal coliform bacteria per 100 milliliters of water and/or water samples indicate variability in quality beyond standards specific to the tests accepted by the National Shellfish Sanitation Program.
- B. A sewage treatment plant or other sewage discharge source could pollute the shellfish growing area in the event of treatment malfunction, overload or poor operation.
- C. Pathogenic microorganisms, radionuclides or harmful industrial wastes reach the shellfish growing area in dangerous concentrations; or
- D. Sufficient current information is not available to assure above conditions do not exist OR current information does not permit prediction that the above conditions are unlikely to occur.

23.20 Designation of Depuration Digging Areas.

The Commissioner shall designate an area closed to all harvesting of shellfish except depuration digging conducted in accordance with DMR regulations if water samples taken from the area exhibit a geometric mean in excess of 14 MPN and less than 88 MPN fecal coliforms/100 milliliters of water or a geometric mean in excess of 70 and less than 700 MPN total coliforms per 100 milliliters of water. Prior to designating an area suitable for harvesting shellfish to be cleansed by depuration, a sanitary survey and sampling shall be conducted to assure that under predictable environmental conditions shellfish to be harvested and water quality will meet depuration standards.

23.30 Closure of Contaminated Areas.

- A. An area shall be closed to the harvest of shellfish immediately if the meats of shellfish harvested from that area contain 80 micrograms of Paralytic Shellfish Poison toxins per 100 grams of shellfish meats or contain concentrations of other toxins or contaminants known to be harmful to consumer health. The commissioner may also close surrounding areas and areas of lower toxicity levels to provide a margin of safety in the event of rapidly changing toxicity levels.
- B. The Commissioner may close areas or fisheries if sufficient current information is not available to assure above conditions do not exist OR current information does not permit prediction that the above conditions are unlikely to occur.

23.40 Repeal of Polluted or Contaminated Area Closures.

The Commissioner shall repeal polluted or contaminated area closure regulations when sanitary surveys reveal that the pollution or contamination conditions no longer exist and that shellfish may be harvested from the area without threat to the public health.

Chapter 24: Importation of Live Marine Organisms

SUMMARY: As authorized by 12 M.R.S.A., Sec. 6071, the Commissioner adopts these regulations concerning the importation and introduction of live marine organisms, regardless of size or age, to prevent the entry of any infectious or contagious diseases or parasites, predators or other organisms that may be dangerous to indigenous marine life or its environment. These regulations are designed to prevent the entry of pests, diseases and parasites into Maine by controlling the deposit of marine organisms from disease or pest-ridden areas and to prevent the spread of diseases or pests within Maine by controlling the deposit of marine organisms from possibly infested Maine coastal areas into disease free coastal areas. These regulations do not apply to transfers within Maine of indigenous organisms not originating in restricted areas in Maine. These regulations do apply to the importation and transfer of live finfish and the circumstances when action will be taken to control disease.

24.01 Definitions

In addition to the definitions found in 1 M.R.S.A., Sec. 72 and in 12 M.R.S.A. Sec. 6001, the following definitions shall apply in interpretation of these importation regulations, Chapter 24:

- A. Import. "Import" means to land on, bring into or deposit in any place subject to the jurisdiction of the State of Maine from outside the State of Maine.
- B. Introduce. "Introduce" means to import, or to land on, bring into or deposit in any place subject to the jurisdiction of the State of Maine from any restricted areas within the State of Maine.
- C. Nonindigenous species. "Nonindigenous species" means an organism belonging to a species that is not native to Maine, that is, that does not now exist naturally in Maine.
- D. Shellfish. "Shellfish" means clams, quahogs, oysters, mussels and scallops.
- E. Finfish. "Finfish" is defined as live fish, fish eggs, or fish gametes, but not to include aquaria species commonly sold in the pet store trade when raised in indoor containers.
- F. Epizootic. "Epizootic" is defined as the occurrence of a specific disease which can be detected in fifty percent of the mortality or moribund individual fish in an affected container, and which results in an average daily mortality of at least one-half of one percent of the affected individual fish for five or more days in any thirty day period.

24.03 Prohibited Activity

It shall be unlawful to import for introduction or to introduce into any coastal waters any live marine organism whether indigenous or nonindigenous, without a permit issued by the Commissioner. It shall also be unlawful to possess any live marine organism which has been imported for introduction or introduced without a permit issued by the Commissioner.

24.05 Permit Application for Marine Organisms

Any person, who wishes to import for introduction or introduce any shellfish or finfish or to possess any such shellfish or finfish, must apply for a permit from the Commissioner. Application for a permit shall be submitted on forms supplied by the Commissioner and shall contain all information required by the Commissioner, including without limitation the following:

- A. name, address, home and business phone of the applicant;
- B. species, life cycle stage and quantity of shellfish or finfish to be imported or introduced;
- C. area of origin, including name and address of hatchery, if any;
- D. area of proposed introduction, including name and address of hatchery or fish cultural facility, if any;
- E. date of proposed introduction;
- F. nature, duration and purpose of introduction;
- G. if a nonindigenous species, an explanation of the known habitat and biological and behavioral characteristics of the species, as well as epifauna and associated organisms; and
- H. a statement of examination by a state, federal or Department of Marine Resources approved private marine laboratory indicating its findings and certifying that the marine organisms to be imported or introduced are free of any infectious or contagious disease agents or pests or parasites based on standard methods of diagnosis.
- I. A valid fish health inspection report issued by a fish health inspector in accordance with Section F of the New England Salmonid Health Guidelines, which are listed in Appendix C.

24.06 Permit application for Shellfish Used as Brood Stock in Hatcheries

Any person who wishes to import or introduce any live shellfish for use as brood stock in a shellfish hatchery or to possess any such shellfish must apply for a permit from the Commissioner. Applications shall contain all information required by the Commissioner including without limitation the information required by 24.05 A through G and a description of the physical facilities and production protocols associated with the quarantine of brood stock required by Section 24.07. Permits may be issued annually. A permit may allow the importation of single or multiple lots of shellfish for use as brood stock in shellfish hatcheries from the area(s) designated in the permit during the period the permit is valid.

24.07 Requirements for Shellfish Held as Brood Stock

Any person issued a permit under 24.06 shall hold such brood stock in quarantine within the hatchery. Effluent from hatchery tanks or other equipment holding brood stock must be treated by chlorination to achieve a free chlorine concentration of at least 50 parts per million at least two (2) hours after application prior to discharge.

Daily records shall be maintained regarding the use of the chlorination treatment system that indicate the time and date of chlorine application and include chlorine test papers used to test results.

24.10 Permit Issuance Criteria for Shellfish

24.10 Permit Issuance Criteria for Shellfish

A. The commissioner may grant a permit to import or introduce shellfish, or to possess such shellfish, only if he finds to a reasonable degree of certainty that those actions will not endanger the indigenous marine life or its environment.

B. In determining whether to issue a permit the commissioner shall consider the probable effects of the introduction of the shellfish into the recipient area, including, but not limited to:

1. The effects of any previous introduction of the same or a similar species in Maine or other areas;
2. The relationship of the species of marine organism to be introduced with other members of the recipient area ecosystem; and
3. The potential effects of infectious or contagious diseases, pests or parasites that might be associated with the species of marine organism to be introduced upon other members of the ecosystem of the recipient area.

C. Shellfish from the restricted areas listed in Paragraph D below shall be presumed to carry the infectious diseases, pests or parasites listed in Appendix A, unless an applicant produces sufficient evidence to rebut this presumption. The presumption may be rebutted by pathologic examination satisfactory to the Department or by a demonstration that the shellfish to be imported, introduced, or possessed have been raised in a closed-system hatchery free of the infectious or contagious diseases found in the coastal waters of the restricted area. Shellfish from areas not listed in Paragraph D must meet the requirements of Section 24.05 and demonstrate either that the shellfish do not carry the infectious disease, pests, or parasites listed in Appendix A or that the shellfish have been raised in a closed-system hatchery free from infectious or contagious diseases.

D. The following geographical areas shall be considered restricted areas for the particular species listed:

1. New York. The areas of New York State known as Great South Bay, Micox Bay and Fisher's Island on the north shore of Long Island shall be a restricted area for all species of shellfish;
2. Connecticut. The area of Connecticut known as New Haven Harbor and the federal Milford Hatchery in Milford, Connecticut shall be a restricted area for all species of shellfish;
3. Rhode Island. The area of Rhode Island known as Charlestown Pond shall be a restricted area for all species of shellfish;
4. Massachusetts. The areas of Massachusetts known as Wellfleet Harbor, Cotuit Bay, Oyster River and Wareham River shall be a restricted area for all species of oysters;
5. New Hampshire. The State of New Hampshire shall be a restricted area for all species of oysters;
6. Maine. All coastal waters within the State of Maine shall be a restricted area for the European Oyster, (*Ostrea edulis*). All territorial waters between Ocean Point, Linekin Neck, Boothbay to Pemaquid Point, Bristol shall be a restricted area for the American oyster, (*Crassostrea virginica*) greater than 3 mm in size. Needs to be updated – additional area in Sheepscot is restricted
7. New Jersey. The State of New Jersey shall be a restricted area for American oysters;

8. Delaware, Virginia, North Carolina, South Carolina, Florida and Louisiana. These states shall be a restricted area for American oysters;
 9. Maryland. This State shall be a restricted area for American oysters and soft-shell clams;
 10. California. The areas of this State known as Mono Bay, Elkhorn Slough, Drakes Estero, Tomales Bay and Humbalt Bay shall be a restricted area for Pacific and European oysters;
 11. Washington. The area of this State known as Willapa Bay shall be a restricted area for Pacific oysters and mussels;
 12. Canada, British Columbia. The areas of this province known as Henry Bay, Denmon Island, Seal Island, Comax Harbor, Lady Smith Harbor, Crofton, Saltair, Sibell and Nanoose Bays shall be a restricted area for Pacific oysters;
 13. Canada, Maritime Provinces. This area of this country shall be a restricted area for American oysters, European oysters, blue mussels and hard-shell clams.
 14. Cuba, Venezuela, Mexico and Brazil. These countries shall be restricted areas for all species of oysters;
 15. Netherlands and Denmark. These countries shall be restricted areas for European oysters;
 16. France. This country shall be a restricted area for all species of oysters;
 17. Japan. This country shall be a restricted area for Pacific oysters;
 18. Australia. This country shall be a restricted area for *Crossostrea commercialis*.
- E. The commissioner may include any permit conditions necessary to protect indigenous marine life or its environment, including, but not limited to, quarantine of brood stock in closed system hatcheries in recipient areas, quarantine of F1 generation individuals in isolation from brood stock and small-scale introduction of F2 generation individuals into recipient areas with continuing disease study.

24.20 Hearing

A hearing on a permit application is not required except that a hearing shall be required where an applicant requests permission to import for introduction, introduce, or possess a nonindigenous species which has not been introduced previously under a Department of Marine Resources permit.

APPENDIX A

Key: B = Benign; U= Unknown; PD = Potentially Dangerous; D = Dangerous; P = Pest

Status of Seriousness	Diseases	Geographic Zones	States
AMERICAN OYSTERS (<i>C. virginica</i>)			
(U)B	Viral gametocyte hypertrophy	Entire east and Gulf coasts	
D	Herpesvirus (hemocytic)	CGM	ME
B	Chlamydia-Rickettsia Disease	Entire east coast	
B	(in ducts and stomach)		
B	(in tubules)	Entire east coast Entire east coast	
(U)PD	Actinomycosis	CSN, DB	NY, NJ
D	<i>Perkinsus marinus</i>	DB, CB, PS (Entire Estuaries east and Gulf coast)	NJ, DE, MD, VA NC
D	<i>Haplosporidium nelsoni</i> (MSX)	CSN, DB, DE, CMA CGM* Marsh River, ME	NJ, NY, DE, MD, VA, ME *Wellfleet, MA
D	<i>Minchinia costalis</i> (SSO)	CGM, CSN, CMA	High salinity estuaries of entire northeast
B	<i>Nemotopsis ostrearum</i>	All Atlantic & Gulf coasts	
B	<i>Ancistrocoma</i> -like ciliates	All Atlantic & Gulf coasts	
B	<i>Sphenophrya</i> -like ciliates	All Atlantic & Gulf coasts	
B	<i>Hexamita</i> sp.	All Atlantic & Gulf coasts	
(U)P	Turbellaria	CSM, CGM	NY, MA, ME
P	<i>Bucephalus cuculus</i>	CB, DB, PS, CMA, CSM, CGM?	All but ME
P			
P	Nematode infections	CB, PM, DB	
PD	Malignant neoplasia	All east coast	
P	Gill Turbellarian	CGM	Canada
D	Malpeque Bay disease		Canada (Gulf of St. Lawrence)
SOFT-SHELL CLAMS (<i>Mya arenaria</i>)			
D	Viral hemotopoietic neoplasia	CGM, CSN	
B	Chlamydia	All Northeast	
PD	<i>Perkinsus</i> sp.	CB, CSN	MD, RI
B	Ciliates	All Northeast	
U	<i>Pseudoklossia</i> kidney gregarine	CSN, CGM	
P	<i>Bucephalus</i> sp.	Unknown	

U	Gill dysplasia	Entire coast	
PD	Gonadal neoplasia	CGM	Searsport, ME. Dennysville, ME
HARD SHELLED CLAMS (<i>Mercenaria mercenaria</i>)			
B	Chlamydia	Entire northeast	
P	Trematode	CSN	NJ
B	Ciliates	Entire range	
U	Arrested gametogenesis	CSN	RI
PD	Chitrid fungus	Eastern Canada	
BAY SCALLOPS (<i>Aequipecten irradians</i>)			
PD	Microsporidan	GMA	MA
U	Kidney gregarine (<i>Pseudoklossia</i>)	CSN	MA, CT
BLUE MUSSELS (<i>Mytilus edulis</i>)			
B	Chlamydia	Entire coast	
U	Bacterial disease of plicate organ	CMA, CNS	
PD	Haplosporidan	CGM	ME
U	<i>Pseudoklossia</i> sp. in kidney	CSN, CGM	MA, ME
B	<i>Steinhusia</i> in ova	CSN	RI
B	Ciliates	Entire range	
P	Trematode redia	CGM, CSN, CMA	
P	Trematode metacercariae <i>Gymnophallus bursicola</i>	CGM, CSM, CMA	
P	Copepod	CGM	ME
P	<i>Pinnotheres maculatus</i>	CSN, CGM	ME
PD	<i>Mytilicola intestinalis</i>	Europe	ME
U	Haematopoietic neoplasm	UK	
D	<i>Mytilicola orientalis</i>	US West coast	
SEA SCALLOPS (<i>Placopecten magellanicus</i>)			
PD	Abscesses	CGM	ME
U	Fungus		ME (Sheepscot River)
EUROPEAN OYSTERS (<i>Ostrea edulis</i>)			
D	<i>Mytilicola orientalis</i>	West coast of US, France	
U	Haematopoietic neoplasm	France	
D	Shell disease (fungus)	European Atlantic coast Canada (Maritime provinces)	

D	<i>Minchinia armoricana</i>	France, Netherlands
D	<i>Martella refringens</i>	France
D	Rickettsia	France
D	<i>Bonamia ostreae</i>	France, Denmark, Netherlands
PD	Herpes-like virus	Wales, GB
D	Microcell disease	California, Connecticut

* Accidental introduction in Wellfleet, MA.

CHAPTER 49 Shellfish Bait Permit

49.01 Harvester Permit:

1. A permit is required to engage in this fishery. A permit may be obtained by applying in writing to the Commissioner. The application must contain the following information:
 - A. Name and address of applicant
 - B. Names of crew
 - C. Vessel name and description
 - D. Type of harvesting gear proposed
 - E. Proposed areas of harvest
2. Harvester Permit Restrictions
 - A. Crew members must possess valid commercial shellfish license's issued under 12 M.R.S.A. §6601.
 - B. Catch must be landed and distributed according to permit restrictions.
 - C. Catch may not be sold to certified shellfish dealers.
 - D. It shall be illegal for certified shellfish dealers to possess shellfish that is for bait only.
3. Reporting: See Chapter 8.20(J) Landings Program
4. Area and/or Season Restrictions:
 - A. Fishing is allowed only in closed areas specifically described on the permit.
 - B. Fishing can occur only during daylight hours.
 - C. No fishing will be allowed in areas classified as approved (open areas).
5. Species Restriction:
 - A. The permit authorizes the harvest of surf clams (*Spisula solidissima*) only.

6. Limitations:

- A. Clams must be shucked and dyed on the vessel. All containers of shucked product must be dyed before they are landed. The dye must discolor the shucked product in a manner that distinguishes it from certified shellfish for human consumption.
- B. All containers must be labeled at sea with red tags stating - BAIT CLAMS ONLY - NOT FOR HUMAN CONSUMPTION.

49.05 Bait Dealer Regulations

Marine mollusks, including shucked shellfish, may be bought, possessed, transported and sold strictly as bait in Maine under the following conditions:

1. Labeling

All shucked shellfish bought, possessed, transported and sold as bait must be labeled in the following manner: "WARNING-BAIT CLAMS ONLY (NOT FOR HUMAN CONSUMPTION)". This warning must be placed on the container in plain view in a type size as large as the largest type of the label.

2. Limitations

- A. All bait shellfish must contain dye that discolors it in a manner that distinguishes it from certified shucked shellfish suitable for human consumption.
- B. It shall be illegal for persons who are certified dealers in accordance with 12 MRSA §6856 to possess shellfish that is for bait only.
- C. It shall be illegal for bait shellfish to be kept in the same cooler or display case as food for human consumption.

3. Reporting: See Chapter 8.05 and 8.10 Landings Program.

4. No shellfish bait permit will be required to buy, possess, transport and sell bait shellfish as long as this rule is adhered to.

Chapter 70 Cable Area Prohibitions

70.01 Hancock County, Dragging Prohibited in Cable Areas

This rule establishes the location of two submarine electric cables owned by the Isle au Haut Electric Power Cable Company running from Stonington, Maine, to Isle au Haut and from Kimball Island to Isle au Haut. The rule makes it unlawful to use any drag or trawl along the seabed in any waters within the limits of the cable areas between Stonington and Isle au Haut, and between Kimball Island and Isle Au Haut, Hancock County.

70.10 Washington County, Cable Area Dragging and Trawling Prohibition

It shall be unlawful to operate any watercraft when towing a drag or trawl within the following area: Starting from the most Northern point on Squires Point, Roque Island, Jonesport; thence westerly 310 degrees mag. to the Eastern shore of Jonesport (Northern Line). From 550 yards + Southerly from the Northern point on Squires Point, Roque Island, Jonesport; thence Westerly 310 degrees mag. to the Eastern shore of Jonesport (Southern Line).

Chapter 90 Conservation Areas

90.02 Lincoln County

A. Boothbay

Conservation Area III. Commencing on June 24, 1960, it shall be unlawful to dig or take in any manner any European oysters from portions of Boothbay and tributary bays and the Sheepscot River and tributary bays in the Towns of Boothbay, Boothbay Harbor, and Southport, Lincoln County, designated and described as follows: All shores, flats and waters inside of a line drawn from the southernmost point of Ocean Point, Linekin Neck, southwesterly to the Coast Guard light station located on the Cuckholds, thence northwesterly to Lower Mark Island, thence northerly to Upper Mark Island in the Sheepscot River, thence easterly to the mainland end of the Hodgdon Island Bridge.

B. Newcastle

Conservation Area I. It shall be unlawful to dig or take in any manner any oysters from all shores, flats and waters of that portion of the Marsh River in the Town of Newcastle, Lincoln County, including the outfall of Sherman Lake, southerly of the railroad bridges across the Marsh River. Nothing herein shall prevent any person from removing seed oysters from the waters of the area; provided the seed oysters are taken or collected in the following manner: In or on bags, crates, strings of shell or other collecting material which bags, crates, strings of shell or other collecting material shall at all times be attached to a raft, floating car or other floating devices anchored in this area of the river for the purpose of collecting seed oysters.

C. Wiscasset

Conservation Area I. It shall be unlawful to dig or take in any manner any marine worms, clams, quahogs, mussels and oysters from all shores, flats and waters of a portion of Sheepscot River, Wiscasset, Lincoln County, bounded on the south by Route No. 1 Highway, on the east by the river channel, on the north by the stone pilings out to the river channel (approximately 192 yards from the Route No. 1 Highway), and on the west by the Maine Central Railroad property.

CHAPTER 95 Closed Areas- Due to Pollution

For the latest list of pollution closures, go to: http://www.maine.gov/dmr/rm/public_health/closures/closedarea.htm

CHAPTER 96 Closed Areas – Due to Paralytic Shellfish Poisoning

For the latest list of red tide (PSP) closures, go to:
http://www.maine.gov/dmr/rm/public_health/closures/pspclosures.htm

Chapter 110: Marine Harvesting Demonstration License

110.01 Definitions

110.02 Marine Harvesting Demonstration

An individual holding a marine harvesting demonstration license may fish for marine organisms for the purpose of providing an educational demonstration of harvesting techniques or of the ecology of the Gulf of Maine as part of a commercial operation. The license application may be obtained by writing the Department of Marine

Resources, attn: Licensing Division, 21 State House Station, Augusta, Maine 04333-0021 or by contacting the DMR Licensing Division at telephone: (207) 624-6550.

110.03 Limitations and Prohibitions

- A. All marine organisms collected must be immediately liberated alive into the area from which they were taken.
- B. Lobster
 - 1. Lobster taken by trap must be immediately liberated alive.
 - 2. When collecting organisms by hand while SCUBA diving, the holder of a marine harvesting demonstration license may not take or possess lobsters.
- C. When collecting marine organisms, other than lobster pursuant to Chapter 110.03(B), by hand while SCUBA diving, the holder of a marine harvesting demonstration license shall limit the number of individual specimens to not more than six (6) per species or not greater than six (6) clusters of colonial marine organisms.
- D. Unless specifically exempted in this chapter, the holder of a marine harvesting demonstration license is subject to all applicable marine resources laws and regulations including but not limited to:
 - 1. Lobster gear utilized must be rigged to conform to whale take reduction protocols pursuant to Chapter 25.20; and
 - 2. This license does not exempt the license holder from the closed periods for lobster fishing under 12 M.R.S.A. §6440.

110.04 Methods of Fishing

A person holding a marine harvesting demonstration license may fish with lobster traps, or may collect marine organisms other than lobsters by hand while SCUBA diving in accordance with this chapter.

Persons fishing with lobster traps must mark each surface buoy with the demonstration license number, which must be prefixed with the letters DL to indicate the type of license, i.e., a demonstration license.

110.06 Vessel Identification

A vessel used for marine harvesting demonstration must be clearly identified. The symbol for a marine harvesting demonstration license is a fluorescent orange semi-circle, at least 12 inches in diameter, and must be displayed on both sides of the vessel, mounted in such a manner that it is clearly visible. The symbol described is available from the Department's Licensing Division for a nominal fee.

A vessel identified as a demonstration vessel may not be used for the commercial harvest of marine organisms pursuant to 12 M.R.S.A. §6810-A(3). A lobster and crab license pursuant to 12 M.R.S.A. §6431-A and §6421(3-A)(E) are commercial licenses.

BUREAU OF MARINE PATROL ROSTER

ADMINISTRATION

Commissioner, Patrick Keliher, Dept. of Marine Resources, Located at 2 Beech Street, Hallowell, 04347	FAX	624-6024	Phone: 624-6550
Colonel Joseph E. Fessenden	FAX	624-6024	Phone: 624-6580
Major Alan Talbot	FAX	624-6024	Phone: 624-6555
Cathy Fetterman	FAX	624-6024	Phone: 624-6571

SPECIAL SERVICES

Pilot/Marine Patrol Sgt. Steve Ingram Located at 2 Beech Street, Hallowell, 04347	FAX	624-6024	Phone: 624-6560
Watercraft Repair Facility, 15 Vieno's Run, Rockland 04841			Phone: 596-2263

MARINE PATROL DIVISION I - Kittery to St. George River

Maine Marine Patrol, Division I Office, DMR Laboratory McKown Point, P.O. Box 8, W. Boothbay Harbor 04575	FAX	633-9579	Phone: 633-9595
Lt. Jonathan Cornish, Division I Office	FAX	633-9579	Phone: 633-9595
Secretary Jane Giegold, Division I Office	FAX	633-9579	Phone: 633-9595

SECTION 1 - Kittery to Portland (Emergency 657-3030 or 1-800-482-0730)

Sgt. Robert Beal	Home:	449-1500	CELL	479-3931
Spec. Edward A Logan		571-9891	CELL	592-2326

P/V VIGILANT (Cell) 446-7139

MPO David Testaverde	361-4683	Kittery - York
MPO Derek Jacobs	798-9116	Cape Neddick - Wells
MPO Mitchell Bailey		Cape Porpoise - Biddeford
MPO Carl Vickerson	829-8399	Saco - Cape Elizabeth
Vacant		

SECTION 2 - Portland to Kennebec River (Emergency 657-3030 or 1-800-482-0730)

Sgt. Daniel White	Home: 563-6743	CELL	592-1260
Spec. Michael W Neelon	Home: 883-8863		

P/V CHALLENGE II (Cell) 592-0213

MPO David Barry	510-7603	Portland area
MPO Thomas Hale	885-9231	Cape Elizabeth-Yarmouth
MPO Christopher Hilton	615-2886	South Harpswell
MPO Scott Couture	725-5683	Orrs Island
MPO Clinton Thompson	729-4284	Bath - Kennebec River
Vacant		Upper Kennebec River

SECTION 3 – Kennebec River to St. George River

(Emergency 624-7000 or 1-800-452-4664)

Sgt. Rene Cloutier
Spec. Michael Forgues

Home: 354-8540 CELL 592-2364
Home: 633-5583

P/V MONITOR (Cell) 592-2170

MPO Matthew Sinclair
Vacant

687-2228 Boothbay-Edgecomb
Kennebec River
974-9208 Bristol to Friendship
542-4552 Waldoboro – St. George

MARINE PATROL DIVISION II – St. George River to Canadian Border

Maine Marine Patrol, Division II Office
22 Coaling Station Lane, Lamoine 04605

Phone/Fax 667-3373

Lt. Dale Sprowl, Division II office
Secretary Heidi Morgan, Division II office

Phone/Fax 667-3373
Phone/Fax 667-3373

SECTION 4- St. George River to Penobscot River

(Emergency 624-7000 or 1-800-452-4664)

Sec. 4 Field Office - Rockland Ferry Terminal
Sgt. Marlowe Sonksen
Spec. Corrie Roberts

Phone: 596-2267
Home: 230-7373 CELL 592-5214
Home: 596-0346

P/V GUARDIAN III (Cell) 592-8456

Spec. Matthew Talbot
MPO VACANT
MPO Wesley Dean
MPO Matthew Wyman
MPO Brian Tolman

789-5747 Rockport – Belfast- Islesboro
Port Clyde - Tenants Harbor
651-4918 St. George – Rockland – Matinicus Isle
785-3184 Vinalhaven – North Haven
273-2227 Vinalhaven/N. Haven

SECTION 5 – Penobscot River to Hancock Bridge

(Emergency 866-2122 or 1-800-432-7381)

Sgt. Jay Carroll
Spec. Colin MacDonald

Home: 244-7280 CELL 446-7137
Home: 422-3416

P/V DIRIGO (Cell) 446-7136

MPO Rustin Ames
MPO Brent Chasse
MPO Sean Dow
Vacant

374-3756 Stockton Springs - Blue Hill
735-8485 Deer Isle/Stonington
667-8020 Swans Isle/MDI/Hancock
Ellsworth/Trenton/MDI

SECTION 6 – Hancock Bridge to Canadian Border

(Emergency 866-2122 or 1-800-432-7381)

Sgt. Troy Dow
Spec. Mark Murry

Home: 664-0221 CELL 592-2925
Home: 255-4183

P/V MAINE (Cell) 592-1558

Spec. Russell Wright

733-7510 Cutler/Lubec

P/V SENTINEL (Cell) 592-8728

MPO Michael Pinkham
MPO Royce Eaton
MPO Gordon Faulkingham
MPO Jason Leavitt
Vacant

422-9953 Gouldsboro
669-4730 Gouldsboro - Cherryfield
497-2268 Cherryfield - Jonesboro
215-2079 Machias - Cutler
Cutler - Calais

(All area codes are 207)

Public Health Division

Shellfish Sanitation/Red Tide Hot Line - 1-800-232-4733

Kohl Kanwit - Division Director

P O Box 8, West Boothbay Harbor, 04575 (207) 633-9535

Kohl.Kanwit@maine.gov

Angel Ripley- Shellfish Program Coordinator

P O Box 8, West Boothbay Harbor, 04575 (207) 633-9515

Angel.Ripley@maine.gov

Seafood Inspectors

Melinda Cook

cell: 557-3558

Melinda.S.Cook@maine.gov

Arthur Rowe

cell: 557-3556

Arthur.Rowe@maine.gov

John Fendl

cell: 592-8934

John.Fendl@maine.gov

Area Biologists

Call individual biologist to confirm a specific town is under their Jurisdiction.

Denis-Marc Nault- Supervisor

Office: (207) 422-2092

email: Denis-Marc.Nault@maine.gov

cell: 592-0512

Hannah Annis- Central Maine

email: Hannah.Annis@maine.gov

cell: 949-4498

Pete Thayer- Southern Maine

Office: 633-9539

email: Pete.Thayer@maine.gov

cell: 592-9384

Heidi Leighton- Eastern Maine

Office: 434-5922

email: Heidi.Leighton@maine.gov

cell: 350-6995

Water Quality-Biotxin Monitoring

Western Maine Growing Area Program Supervisor (Kittery to Belfast)

Alison Sirois,

PO Box 8, W. Boothbay Harbor, 04575 (207) 633-9401

Alison.Sirois@maine.gov

Eastern Maine Growing Area Program Supervisor (Searsport to Calais)

Meggan Dwyer,

22 Coaling Station Lane, Ellsworth, 04605 (207) 667-5654 (C) 485-8352

Water Quality - Lamoine

Michael Risoldi, Water Quality Lab Supervisor
22 Coaling Station Lane, Ellsworth, 04605 (207) 667-5654 Michael.Risoldi@maine.gov

Water Quality – Boothbay Harbor

Cathy Vining, Water Quality Lab Supervisor
PO Box 8, W. Boothbay Harbor, 04575 (207) 633-9682 Cathy.Vining@maine.gov